No. 2875

# United States

# Circuit Court of Appeals

## For the Ninth Circuit.

CHARLES H. MOYER, as Trustee for the Western Federation of Miners, a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, State of Colorado, CHARLES H. MOYER, C. E. MAHONEY and ERNEST MILLS as Members of the Western Federation of Miners, a Voluntary Unincorporated Association of Persons With Its Headquarters in the City and County of Denver, Colorado,

Appellants,

vs.

THE BUTTE MINERS' UNION, a Corporation,

Appellee.

## BRIEF OF APPELLEE.



A. C. McDaniel,
Peter Breen,
Solicitors for Appellee.

*United States Circuit Court of Appeals for the Ninth Circuit.*

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Appellee.

**Brief of Appellee.**

ADDITIONAL STATEMENT OF THE CASE.

While we have no fault to find with the statement of the case made by the appellants as far as it has gone, we still feel that it is not sufficiently full to correctly present the cause to the Court.

Reading paragraph 5 of plaintiff's complaint (R. 6) would give the impression that on the 22d day of September, A. D. 1914, the first application of defendant was made for a charter to the plaintiff, Western Federation of Miners, when instead what was asked at that time was a reissuance of a charter had prior to said date, which said charter had been destroyed. (R. 7.)

To the complaint of plaintiffs, defendant filed its answer, which, among other things, denies that at the time of filing of the said answer, the Western Federation of Miners was an active labor organization, further alleging that at one time the said Western Federation of Miners was a voluntary unincorporated association of persons, following the vocations described in plaintiffs' complaint, but that owing to certain abuses consisting of the perpetuation in official positions of the individual plaintiffs and others mentioned in said answer, and the collection of vast sums of money set forth in said answer, it became discredited in all mining sections formerly represented by it, and to all intents and purposes had ceased to exist. (R. 18–20.)

Defendant denies all of the allegations of paragraph 8 (R. 10) of plaintiffs' complaint, and further alleges that during the time that defendant was a local of the plaintiff, Western Federation of Miners, the said Western Federation of Miners drew as per capita tax, money for supplies, donations and assessments, both forced and voluntary, from the defendant, a sum in excess of One Million Dollars, and that when defendant was in trouble in the month of June and July, 1914 (R. 29), the plaintiff, Charles H. Moyer, President of the Western Federation of Miners, attempted to draw the money of defendant on deposit in the banking-house of the Daly Bank & Trust Company, in Butte, Montana, and that the said plaintiff, Charles H. Moyer, did later procure the adoption of an amendment to the constitution of the said Western Federation of Miners giving him

power, upon petition of ten per cent of defendant's members, preferring charges against its officers, to take possession, management and control of the property of this defendant, a Montana corporation, and that for the enforcement of said purpose, did institute and prosecute suits in the District Court of Silver Bow County, Montana, for said purpose, and further alleging in its answer (R. 30) that instead of the plaintiff, Western Federation of Miners, prosecuting suits on behalf of this defendant, this defendant has, at its own expense, on numerous occasions, personally employed counsel to defend the plaintiff, Charles H. Moyer, and other members of the Western Federation of Miners, and has contributed large sums of money to carry on litigation for and on behalf of the Western Federation of Miners.

Further answering, defendant sets forth nine affirmative defenses. For a more complete statement of its third affirmative defense (R. 31–50), this defendant claims that it incorporated under the Laws of the State of Montana, on the 4th day of May, 1881, and sets forth a certified copy of its Articles of Incorporation (R. 449–454), and did thereafter, in compliance with the said Articles of Incorporation, adopt a constitution and by-laws for its government, and did proceed to do and perform each and all of the obligations by it to be done and performed by its members in compliance with the laws of the State of Montana, and did thereafter, on the 8th day of February, 1901, renew its corporate existence, and did ever since it became a corporation under and by virtue of the laws of the then territory of Montana

carry on its business as such, and did in compliance with the power in it vested for the purpose of building a hall in which to hold its meetings and transact its business, establishing a library, caring for the sick and burying its dead, did, by their consent, collect monthly dues from each of its members, which said money was used for the said purposes, and that the plaintiff, or any of them, had nothing to do with the creation of the said fund, and further alleging that defendant was organized as a corporation under the laws of Montana, for a period of more than twelve years prior to the organization of the plaintiff, Western Federation of Miners, and had been doing business as a voluntary industrial organization for a period of nearly three years prior to its organization, which was antedating the birth of the plaintiff, Western Federation of Miners, a period of about fifteen years. Further alleging that by reason of the monthly dues so collected and the investment of its surplus funds created thereby, the defendant was able to build a hall, care for its sick and distressed members, bury its dead and fulfill the objects of its corporate existence, was further able to deposit in the banks of Silver Bow County, Montana, a large surplus of money, which on or about the 15th day of May, 1893, amounted to approximately Sixty Thousand ($60,000) Dollars, and did during said time by reason of its income from dues and revenue derived from the rent of its hall and interest upon its deposits, after fulfilling the objects of its corporate existence, as aforesaid, and was enabled to

loan moneys to other miners' unions in the sum of approximately Fifteen Thousand Dollars.

Further alleging that no part of the said money and other properties above set forth was created by the plaintiffs, or any of them, or in any other manner than above specified.

Defendant, in its answer, further denies any authority under its constitution and by-laws whereby the property of one of its locals can become forfeited to or confiscated by the said Western Federation of Miners upon the withdrawal of the said local from membership in the Western Federation of Miners, and sets forth in its answer a true copy of the constitution and by-laws of the said Western Federation of Miners. Defendant further alleging that between the first day of July, 1913, and the first day of July, 1914, the defendant contributed to the plaintiff, Western Federation of Miners, the sum of $158,925.60, and that the plaintiff, Western Federation of Miners, at the end of said period, claimed defendant owed them, in addition to the amount already contributed, the sum of $60,415.65, and was denied any information as to what the said sums of money were to be used for.

Defendant further denies that it ever accepted the charter set forth in the complaint of plaintiffs, and continued for a short period of time to work under the old charter of May 15, 1893. Further alleging in said third affirmative defense that on the 18th day of December, 1914, Charles H. Moyer, C. E. Mahoney, Guy E. Miller, Ernest Mills and others brought an action in the District Court of

Silver Bow County, Montana, to get possession and control of the property of this defendant, and thereafter were granted a temporary restraining order, and thereafter evidence was heard upon the issues in said cause, and the matter was finally submitted to the Court on the 2d day of June, 1915, and the said trial court did, thereafter and upon the 12th day of June, 1915, file its conclusions of law in said case, finding all the issues in favor of the plaintiff, and did thereafter on the 14th day of June, 1915, sign a judgment in said matter in accordance with its said findings.

That thereafter and on the 28th day of June, 1915, the defendants therein named commenced proceedings in the Supreme Court of the State of Montana to annul said order of the District Court, and on said date the said Supreme Court of the State of Montana duly made and entered an order ordering the said respondents to appear before said Supreme Court on the 3d day of July, 1915, then and there to show cause, if any they had, why said orders made on June 12th and June 14th, 1915, should not be annulled and set aside; that a hearing was had on said proceedings before said Supreme Court on the 3d day of July, 1915, and said matter was submitted to the said Supreme Court for decision on said date.

That thereafter and on the 7th day of July, 1915, the said Supreme Court duly and regularly made, gave and entered its judgment in said matter annulling the said orders of the said District Court made on the dates above referred to. (R. 45–50, 232–234, 294.)

Because of the burdens imposed upon it, and the troubles caused it by the said plaintiff, the Western Federation of Miners, and for the further fact that it required the sum of $919,522.03 to conduct the business of the plaintiff, Western Federation of Miners, for one year, and that a number of its officers had, in a period varying from twenty days to three months, handled large sums of money, the smallest being $25,000 and the largest $100,000, this answering defendant did, by resolution, withdraw from the Western Federation of Miners upon the 15th day of June, 1915. A trial of the cause was had on these pleadings as set forth in appellants' statements as the same appears (R. 1–295), and the Court upon hearing all of the testimony offered in support thereof found that appellee was incorporated in 1881 under the laws of the State of Montana, and also found that defendant and other labor unions organized the plaintiff, Western Federation of Miners in 1893, and further found that in 1893 defendant received a charter from the plaintiff, Western Federation of Miners, and further found that the said charter did not contain the forfeiture clause referred to in plaintiffs' complaint and in the answer of appellee. The Court also found that the charter for which application was made on the 22d day of September, 1914, was not accepted by appellee herein, and further found that even though the charter of May 15, 1893, and the charter of September 22, 1914 (if it had been accepted), did contain the said clause referred to as the "forfeiture clause," that it would be a nonseverable part of an entire and *ultra vires*

contract or agreement, and so unenforceable (R. 301), and in this connection the Court also found that the evidence was insufficient to establish that said stipulation was in the 1893 charter, and was, on the contrary, persuasive (R. 301) that ordinarily such a stipulation was opposed by this appellee, and was because of said opposition stricken out, and the appellee herein permitted to have a special charter of its own printed, which was done and dated May 15th, 1893, while the first charters printed by the Federation were ordered May 20th, 1893, and given numbers and first issued June 16th, 1893; the Court also comments upon the fact that for the above reasons the plaintiffs' suit was founded on the 1914 charter instead of the charter of 1893, and ordered a decree for defendant.

The assignment of errors filed by appellants are fifteen in number (R. 572–582), which we do not deem necessary to answer singly, but will answer them collectively. We are also of the opinion that appellants will not, in their brief, attempt to argue the case in the order set forth in its said assignment of errors.

It is alleged in the bill of complaint of plaintiffs, and admitted in the answer, that the appellee is a Montana corporation, incorporated as such on the 4th day of May, 1881, and that it has existed as a bona fide voluntary incorporated organization of workingmen and miners since June 13th, 1878; the date of its first organization as a body of union men. The law governing corporations of this character, and under which appellee was incorporated is copied

from the laws of Montana, Revised Statutes of 1879, page 462, which reads as follows:

## RELIGIOUS, BENEVOLENT, AND OTHER LIKE CORPORATIONS.

Sec. 292. Associations for the purpose of establishing and conducting churches, lyceums, libraries, lodges of Free and Accepted Masons, Odd Fellows, Good Templars, granges of Patrons of Husbandry, and all other associations, societies, and orders of like character, Agricultural Societies, Stockgrowers' Associations, and other associations and institutions of a like character, may become incorporated upon complying with the provisions of this article.

Sec. 293. It shall be lawful for any such association, at a regular meeting thereof, or at a special meeting for that purpose called, to adopt, by a vote of two-thirds of the members thereof then present, a resolution to the following effect: Resolved, That the trustees of this (lodge, or other association, as the case may be), to wit: (A, B, C, D, etc., giving the names of the duly elected trustees), be, and are hereby, authorized to incorporate this (lodge, or as the case may be), and for that purpose to file with the proper officer such certificate as is required by law; and said trustees shall conduct the affairs of the corporation so formed until (date at which, by the laws of such association, the next annual election of the trustees thereof occurs).

Sec. 294. The trustees, of whom there shall not be less than three, nor more than nine, named in such resolution, may thereupon make, sign, and acknowledge before any officer authorized to take the acknowledgment of deeds in this Territory, and have recorded in the office of the recorder of the county in which the affairs of such association are to be conducted, or, if such corporation shall be a grand lodge, or other body having associations subordinate to it in several counties, then, in the office of the secretary of the Territory, a certificate in which shall be stated the name, or title, by which the association shall be known, the particular business or objects of the

association, the number of trustees to conduct the same, and the time of the annual election of such trustees, and shall attach to such certificate a copy of the resolution required by section 293 of this article, which copy shall be certified by the presiding and recording officers and the seal of such association.

Sec. 295. Upon filing for record such certificate, such association shall become a body politic and corporate, with power to sue and be sued by its corporate name, to have and use a common seal, which may be altered at pleasure, to establish a constitution and by-laws, and make all such rules and regulations as may be deemed expedient for admission to membership therein, and the termination of such membership, and for the management of its affairs, in accordance with law; to take by purchase, gift, grant, or devise, and hold and use personal property, and so much real estate as may be necessary or convenient to carry out the objects for which it was formed, and to dispose of such property: Provided, That the period of existence of such corporation shall not exceed twenty years.

Sec. 298. That the act entitled "An act to provide for the formation of corporations other than those for pecuniary profit," approved February 9, 1876, be, and the same is hereby, repealed: Provided, That such repeal shall not affect any incorporation formed under said act prior to the passage of this article.

The said law was thereafter amended or re-enacted by the 8th Session Legislative Assembly of the State of Montana, in 1903, and is contained in the Laws of Montana of the 8th Session, 1903, at pages 141–144. A true copy of said Session Laws is herein set forth.

An act to amend Sections 860, 861, 862, 863 and 865 of the Civil Code relating to Religious, Social and Benevolent Corporations.

Be it Enacted by the Legislative Assembly of the State of Montana:

Section 1.

Sections 860, 861, 862, 863 and 865 of the Civil Code are hereby amended so as to read as follows:

860. Associations, where pecuniary profit is not the object, for the purpose of establishing and conducting churches, hospitals, lyceums, musical and scientific societies, libraries, lodges of Free and Accepted Masons, Independent Order of Odd Fellows, Independent Order of Good Templars, granges of Patrons of Husbandry, and all other associations, societies and orders of like character, and social clubs and agricultural societies, stockgrowers' associations, and other associations of like character, including local, independent and subordinate organizations as well as State, representative, supervisory, governing and grand organizations and bodies, of any such associations, society or order may become incorporated upon complying with the provisions of this Title.

861. It shall be lawful for any such association at any regular meeting thereof or at a special meeting for that purpose called, to adopt by a vote of two-thirds of the members thereof then present, a resolution to the following effect:

"Resolved, That the Trustees, of this (Church, synod, presbytery, conference, assembly, lodge, grand lodge or other association, as the case may be), to wit: (A, B, C, D, etc., giving the name of the duly elected Trustees or Directors) be, and are hereby authorized to incorporate this (church, synod, presbytery, conference, assembly, lodge, grand, or other association, as the case may be), and for that purpose to file with the proper officer articles of incorporation as required by law." The Trustees or Directors named in such resolution must conduct the affairs of the corporation so formed until their successors are elected and qualified.

862. The Trustees or Directors of whom there must be not less than three and not more than thirteen, named in such resolution may thereupon make, file and record in the office of the County Clerk and Recorder of the County where such association is located, if such association be a local or subordinate

association, or in the office of the Secretary of State, if such association be a state, representative, supervisory, governing or grand organization or body, articles of incorporation and must attach to such articles a copy of the resolution provided for in Section 861, certified to by the President or other presiding officer, and the Secretary or other recording officer of such meeting. In lieu of the requirements of Section 403 of this Code such articles of incorporation must contain the following:

1. The name of the Corporation.
2. The purpose for which it is organized.
3. The number of Trustees or Directors for the first year of the corporate existence of such corporation.

Corporations so organized may have continual succession, have a common seal, elect all necessary officers, adopt by-laws not inconsistent with laws and enforce the same by appropriate penalties; have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise or bequest personal or real estate and may use and dispose thereof only for the purposes for which the corporation is organized.

863. Corporations organized for the purposes other than profit may, in their by-laws, ordinances, constitutions or articles of incorporation, in addition to the provisions in Section 862 of this Code, provide for:

1. The qualification of members, mode of election, and terms of admission to membership.
2. The fees of admission and dues to be paid into their Treasury by members.
3. The number of members that constitutes a quorum at any meeting of the Corporation, and an election of officers of the Corporation by a meeting so constituted, shall be as valid as if there had been a majority of the members present thereat and voting.
4. The expulsion and suspension of members for misconduct or nonpayment of dues; also for restoration to membership.

5. Contracting, securing, paying and limiting the amount of their indebtedness.

6. Other regulations, not repugnant to the constitution or laws of the State and consonant with the objects of the Corporation.

865. Corporations of the character mentioned in this title heretofore organized or that may be hereafter organized may mortgage or sell real and personal property held by them in such way and through such officers as may be authorized by their constitutions, by-laws or resolutions.

Section 2.

All Acts and parts of Acts in conflict with this Act are hereby repealed.

Section 3.

This Act shall take effect and be in full force from and after its passage.

Approved Mch. 5th, 1903.

This Act was again amended as appears by Sections 4224 and 4229, inclusive, Revised Codes of Montana, 1907, a true copy of which reads as follows:

## RELIGIOUS, SOCIAL AND BENEVOLENT CORPORATIONS.

4224. Churches, charities, and fraternal societies. Associations, where pecuniary profit is not the object, for the purpose of establishing and conducting churches, hospitals, lyceums, musical and scientific societies, libraries, lodges of Free and Accepted Masons, Independent Order of Odd Fellows, Independent Order of Good Templars, granges of Patrons of Husbandry, and all other associations, societies and orders of like character, and social clubs and agricultural societies, stockgrowers' associations, and other associations of like character, including local, independent and subordinate organizations as well as state, representative, supervisory, governing, and grand organizations and bodies, of any such associations, society or order may become incorporated upon complying with the provisions of this Title. (Act approved March 8th, 1903, §1.) (8th Sess., Chap. 70.)

4225. Resolution to become incorporate.—It shall be lawful for any such association at any regular meeting thereof or at a special meeting for that purpose called, to adopt by a vote of two-thirds of the members thereof then present, a resolution to the following effect:

"Resolved, That the Trustee of this Church, synod, presbytery, conference, assembly, lodge, grand lodge or other association, as the case may be, to-wit: (A. B., C. D., etc., giving the name of the duly elected Trustee or Directors) be and are hereby authorized to incorporate this (church, synod, presbytery, conference, assembly, lodge, grand or other association, as the case may be), and for that purpose to file with the proper officer articles of incorporation as required by law." The Trustees or Directors named in such resolution must conduct the affairs of the corporation so formed until their successors are elected and qualified. (Act approved March 8th, 1903.) (8th Sess., Chap. 70.)

4226. Articles of incorporation. Powers of corporation.—The Trustees or Directors of whom there must be not less than three and not more than thirteen, named in such resolution may thereupon make, file and record in the office of the County Clerk and Recorder of the County, where such association is located, if such association be a local or subordinate association, or in the office of the Secretary of State, if such association be a state, representative, supervisory, governing or grand organization or body, articles of incorporation and must attach to said articles a copy of the resolution provided for in Section 4225 (861) certified to by the President or other presiding officer and the Secretary or other recording officer of such meeting. In lieu of the requirements of Section 3818 (403) of this Code such articles of incorporation must contain the following:

1. The name of the Corporation.
2. The purpose for which it is organized.
3. The number of Trustees or Directors for the first year of the corporate existence of such corporation.

Corporations so organized may have continual succession, have a common seal, elect all necessary officers, adopt by-laws not inconsistent with laws and enforce the same by appropriate penalties; have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise or bequest personal or real estate and may use and dispose thereof only for the purposes for which the corporation is organized. (Act approved March 8th, 1903.) (8th Sess., Chap. 70.)

4227. Corporations organized for purposes other than profit may, in their by-laws, ordinances, constitutions or articles of incorporation, in addition to the provisions in Section 4226 (862) of this Code, provide for:

1. The qualification of members, mode of election, and terms of admission to membership.

2. The fees of admission and dues to be paid into their Treasury by members.

3. The number of members that constitutes a quorum at any meeting of the Corporation, and an election of officers of the Corporation by a meeting so constituted, shall be as valid as if there had been a majority of the members present thereat and voting.

4. The expulsion and suspension of members for misconduct or nonpayment of dues; also for restoration to membership.

5. Contracting, securing, paying and limiting the amount of their indebtedness.

6. Other regulations, not repugnant to the constitution provided for in Section 4225 (861), certified to by the President or other presiding officer and the Secretary. (Act approved March 5th, 1903.) (8th Sess., Chap. 70.)

4228. Incorporation of church or religious societies.—The representative body of any church or religious society in this state, such as conference, synod, convocation, convention, or the like, may elect not less than three of its members of such church or religious society, as trustees with authority to form a corporation for holding and administering all trust

funds for general or special purposes, or for holding the legal title to real estate for use and in trust for the said church or society, or any congregation or parish thereof, and for conducting and transacting the business affairs of such church or religious society, or any congregation or parish thereof; and any church or religious society may authorize the formation of as many corporations of this character as may be deemed necessary and proper for this purpose. Such persons so appointed as trustees must, thereupon, make, execute, acknowledge and file articles of incorporation in the office of the county clerk and recorder of the county wherein such business is to be transacted, and a certified copy thereof in the office of the secretary of the state of Montana. Such articles may contain the statements set forth in Section 4226 (862) of this Chapter, as amended. There must be attached to the articles of incorporation a transcript of the record of their election as such trustees, certified to by the presiding and recording officer of the body by which they are elected and, thereupon, such persons and their successors in office shall become a body politic and corporate, and shall have and exercise the powers set forth in Sections 4226 (862) and 4227 (863) of this Chapter, as amended by the Act approved March 15, 1903, and such corporation may, also, in its by-laws or articles of incorporation provide for the number, name or designation of its officers, their qualifications, duties, terms of office, and manner and time of election or appointment. (Act approved March 5, 1907.) (10th Sess., Chap. 105.)

4229. (§ 865.) Power to mortgage or sell property.—Corporations of this character mentioned in this title heretofore organized or that may be hereafter organized may mortgage or sell real and personal property held by them in such way and through such officers as may be authorized by their constitutions, by-laws or resolutions. (Act approved March 5th, 1903.) (8th Sess., Chap. 70.)

The said Act was again amended by the Legislative Assembly of the State of Montana, and was ap-

proved by the said body on March 6th, 1909, and is found on pages 136, 137 and 138 of the Laws of Montana, 11th Session, 1909, a true copy of which reads as follows:

A Bill for an Act to Amend Sections 861 and 862 of the Civil Code, being Sections 4225 and 4226 of the Revised Codes of 1907, Relating to Religious, Social and Benevolent Corporations, and providing that Two or More Religious, Social or Benevolent Corporations May Incorporate Conjointly.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. That Section 861 and 862 of the Civil Code, being Sections 4225 and 4226 of the Revised Codes of Montana, 1907, Respectively be amended so as to read as follows:

Section 4225. It shall be lawful for any such association at any regular meeting thereof or at a special meeting for that purpose called, to adopt by a vote of two-thirds of the members thereof then present, a resolution to the following effect:

"Resolved, That the trustees of this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), to wit: (A. B., C. D., etc., giving the names of the duly elected trustees or directors) be and are hereby authorized to incorporate this (church, synod, presbytery, conference, assembly, lodge, grand lodge, or other association, as the case may be), and for that purpose to file with the proper officer articles of incorporation as required by law." The trustees or directors named in such resolution must conduct the affairs of the corporation so formed until their successors are elected and qualified. In case two or more of the associations mentioned in this chapter own or are desirous of owning real or personal property, conjointly and managing the same conjointly, where pecuniary profit is not the object, they may each by resolution adopted in the same manner as hereinabove provided in this section

instruct their trustee or director, or trustees or directors, respectively, to act in conjunction in incorporating under the provisions of this chapter, and in the articles of incorporation, or in their respective by-laws, may provide for the annual election of the trustees of the corporation who shall succeed those named in the articles of incorporation.

Section 4226. The trustees or directors of whom there must not be less than three and not more than thirteen in the aggregate, named in such resolution or resolutions may thereupon make, file and record in the office of the county clerk of the county where such association or associations is or are located, if such association or associations be local or subordinate associations, or in the office of the secretary of state, if such association be a state, representative, supervisory, governing or grand organization or body, articles of incorporation and must attach to such articles a copy of the resolution or resolutions provided for in Section 861 of the Civil Code, being Section 4225 of the Revised Code of Montana of 1907 certified to by the president or other presiding officer and the secretary or other recording officer of such meeting or meetings. In lieu of the requirements of Section 3818 (403) of this Code such Articles of incorporation must contain the following:

1. The name of the corporation.
2. The purpose for which it is organized.
3. The number of trustees or directors for the first year of the corporate existence of such incorporation.

Corporations so organized may have continual succession, have a common seal, elect all necessary officers, adopt by-laws not inconsistent with law and enforce the same by appropriate penalties, have the same rights as other corporations in prosecuting and defending suits at law; may take and hold by purchase, gift, devise or bequest, personal or real estate, and may use and dispose thereof only for the purpose for which the corporation is organized.

Section 2. All acts and parts of acts in conflict with this act are hereby repealed.

Section 3. This act shall take effect and be in full force from and after its passage and approval.

Approved March 6, 1909.

Reading the law under which appellee was incorporated and all of the amendments thereto adopted since the date of its incorporation will show to the Court that none of the amendments later enacted enlarge the powers conferred upon appellee at the date of its incorporation.

Under and by virtue of the Laws of the State of Montana as above set forth, the following Articles of Incorporation were adopted by the appellee on the said 18th day of April, 1881. (R. 449–453.)

ARTICLES OF INCORPORATION OF BUTTE MINERS' UNION.

KNOW all men by these presents, that we the undersigned, residents of Silver Bow County, Montana Territory, pursuant to a resolution of the Butte Workingmen's Union (whose name has since been changed to that of the "Miners' Union," being an association of miners and others) adopted at a meeting held for that purpose in Butte City, of said County and Territory, prior to the signing and sealing of these presents, which resolution is as follows, to wit:

"Resolved, that the trustees of the Butte Working Men's Union, to wit: Eugene Sullivan, Charles S. Shoemaker, Michael Grace, James Cardigan, and Henry Rodda be, and are hereby authorized to incorporate this union, and for that purpose to file with the proper officers such certificate as is required by law; and that said trustees shall conduct the affairs of the corporation so formed until their successors are elected at the next annual election held for that purpose," do this day hereby associate ourselves together for the purpose of incorporating said association under the laws of the territory of Montana:

That said association shall be known by the corporate name of "The Miners' Union," and we hereby certify that the objects for which this corporation is founded are: To protect the interests of the membership of said association, and to enable it to hold such property as may be necessary for the promotion of its good and the advancement of the interest of the same, and to enable it to establish subordinate organizations, and to become a body politic and corporate in law and to this end.

1st. The property of said association shall be held by the trustees thereof, and their successors in office, as such, with the exception of money, which shall be held by the Treasurer of said corporation.

2d. The trustees shall have power to sell, lease or mortgage any real estate or other property the corporation may have, or may hereafter acquire, for the purpose of enabling said corporation to erect and maintain a Hall for the meeting of said society, to wit: The Miners' Union.

3d. The trustees shall have the power in their discretion to issue stock which shall be unassessable, for the purpose of building and maintaining said Hall, but said stock so issued shall not exceed in amount the sum of Ten Thousand Dollars ($10,000).

4th. Said incorporation may at any time, provide itself or the public with a public or private library, and may lease or rent any portion of any property owned and not otherwise used for said purpose.

5th. Said incorporation shall have power to sue and be sued, to plead and be impleaded in their corporate name.

6th. Said incorporation may have a seal which may be changed at pleasure.

7th. That said trustees shall hold their office until the first annual meeting in *in* March, A. D. 1882, or until their successors are elected, and that thereafter a board of trustees consisting of not less than five, nor more than nine, who shall be members of said society, or incorporation, "The Miners' Union," shall be elected for the period of one year, or until their successors are elected, and that in case

of any vacancy happening in said board of directors, said corporation shall have power to elect one or more of its members to fill such vacancy or vacancies, at any meeting after the happening of the same: That as soon after the election of said trustee, or any of them, as may be, the President of said incorporation shall issue under his hand and the seal of said incorporation, a certificate of election to each of said trustees so elected, which shall be good and sufficient authority for authorizing said trustees to act for said incorporation.

8th. Said incorporation shall be subject to such rules and regulations as it may now have for its government, or may hereafter enact, provided they are not contrary to these Articles of Incorporation.

9th. Said incorporation shall have power to establish branch organizations, which shall be subject in their government to the rules and regulations of this society, to wit: "The Miners' Union"; but in all other particulars they shall be free and independent; That when any nine persons desire to establish a branch organization they may apply to the President of the Union, who may, in his discretion authorize the institution of such branch society, and shall, when so established, grant to said branch society, a Charter, signed by himself and the Recording Secretary and attested under the seal of said incorporation.

10th. That the private property of the members of this incorporation shall not be subject to the corporate debts of the same.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 18th day of April, A. D. 1881.

CHARLES S. SHOEMAKER. (Seal)
EUGENE D. SULLIVAN. (Seal)
MICHAEL GRACE. (Seal)
JAMES CARDIGAN. (Seal)
HENRY RODDA. (Seal)

Territory of Montana,
County of Silver Bow,—ss.

On this 18th day of April, A. D. 1881, before me, the undersigned, a Notary Public in and for the Territory of Montana, personally appeared James Cardigan, Eugene D. Sullivan, Harry Rodda, Michael Grace and Charles S. Shoemaker, to me personally known to be the persons described in, and who executed the foregoing instrument, and who severally acknowledged to me that they executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the day and year in this certificate above written.

(Notarial Seal)

(Signed) CHARLES S. WARREN,
Notary Public, Montana Territory.

It further appears that the corporate existence of appellee was seasonably renewed. (R. 454.)

The Revised Statutes of Montana, 1879, as above set forth, show how appellee was incorporated and the amendments thereto above thereafter set forth show that its powers and privileges have not in any manner been changed since its incorporation.

The Articles of Incorporation of appellee above set forth, and as the same appears of Record, pages 449 to 454, show what its purposes and objects were, and what it could and could not do. In view of the above we respectfully submit that the Trial Court did not err when it handed down its opinion and ordered a decree for this appellee.

The laws of Montana, as above set forth under which appellee is, and was incorporated, provides how its property can be acquired, held and disposed

of. Appellee, a corporation organized under the Laws of the State of Montana, exists for certain definite and specific purposes; its assets are, in a certain sense, held in trust by its officers, nor can the corporation by a distinct contract divert its assets to some other channel. The defendant corporation was organized under the laws of Montana for the benefit of its members, for local purposes, social and benevolent purposes, charity in rather a broad sense, and protection to its members and their families. The limited funds raised by it were raised so that it might carry out its original purposes. At the date of its birth and for fifteen years thereafter it had nothing to do with the appellant, Western Federation of Miners, as the said appellant had no existence during that period of time. No contemplation was had under its Articles of Incorporation that it might trade off its authority, its corporate entity and the property which it might acquire to some other corporation, association or institution, foreign in its nature. Any funds which it had on hand were raised for the purpose of caring for its sick, burying its dead, feeding, clothing and housing the living dependents of its deceased members. The assumption on the part of the appellant, Western Federation of Miners, to issue a charter to a corporation already organized, and to provide therein for its suspension or dissolution on certain contingencies arising, and for the absorption of its property is in conflict with the authority given by the State to the corporation (appellee herein), and is in conflict with the other purposes of its creation, and would be contrary to

public policy, and of no force and effect whatever. It is unreasonable to suppose that appellee, regardless of any prohibition contained in its Articles of Incorporation, would enter into such a contract. On the 15th day of May, 1893, the date of the birth of the appellant, Western Federation of Miners, it was nothing but an infant organization at said time, created by appellee, who, as aforesaid, had been in existence fifteen years, and who together with other organizations from the State of Montana, the States of Idaho, Colorado and South Dakota, joined in its creation; that at said date appellant was without one dollar of property; that at said time it was an experiment; that under the laws of Montana, and under its Articles of Incorporation, this appellee had power to create the appellant, Western Federation of Miners, or to create other local organizations, which would be subject, in their government, to the rules and regulations of this society, to wit: The Miners' Union (R. 452), and to issue charters to them, and, as above stated, did create and assist in creating appellant, but nowhere does it appear in the said Articles of Incorporation, or under the laws of Montana, as above set forth, how it could subordinate itself to the appellant, Western Federation of Miners, or any other body or organization. The property of appellee was contributed to it by the individual members thereof for certain specified purposes. We claim that the funds so created cannot be diverted or used for any other purpose than those set forth in its Articles of Incorporation or incidental thereto. Appellant claims the said property

of appellee by virtue of a charter contract, but fails to state for what purpose they will apply or use the said funds or property of appellee if successful in this suit.

The Court, after hearing all of the testimony in this case, found that the charter set forth in appellants' complaint (R. 8–9) was not accepted by appellee, and further found that the said charter above referred to was not a duplicate or reissuance of the charter bearing date May 15, 1893, and that the charter of 1893 contained no forfeiture clause of the character referred to by appellant.

The Court further found that even though either or both of the charters referred to in the evidence contained said forfeiture clause, that the laws under which appellee was organized and under the power granted by its Articles of Incorporation it could not enter into a contract of this character. Such a contract would be unenforceable. (R. 296–302.)

It would needlessly encumber the record to separately argue the two propositions, namely, the non-acceptance of the 1914 charter, and the fact that the 1893 charter did not contain the forfeiture clause. so we will argue them jointly, and for said purpose, and for the purpose of placing this Court as near as possible in the position of the lower court, we will set out the evidence contained in the record in so far as the same relates to the above propositions.

The first witness called by appellant on direct examination by Mr. Geagon was Charles E. Mahoney, who testified as follows:

Q. Do you know of what state Mr. Moyer is a citizen? (R. 307.)

A. Yes. (R. 308.)

Cross-examination by Mr. BREEN.

The WITNESS.—I stated that I was vice-president of the Western Federation of Miners, and I have been such since 1906. Prior to that time I was a member of the executive board. Those offices carry with them a salary. I went on the executive board in September, 1904.

Q. And the salary, I believe, is seven dollars and fifty cents a day and railroad expenses? (R. 342.)

A. No, sir. * * * My salary is five dollars a day and my expense account is two and a half a day. I also get my railroad fare in addition to that. (R. 342.)

I have testified as to the citizenship of Mr. Moyer. I don't know positively as to what local he is a member. I don't recall testifying that he was a member at large; don't remember of testifying to that a year ago. (R. 345.)

Q. You do know that there is no such thing as a member at large provided for by the Constitution, don't you? (R. 343.)

A. A union at large is the same as any other local; it bears the same relation to the Western Federation of Miners; is comprised of men who may join it and not be assessable to other local unions.

This little blue book which you show me is the Constitution and Laws of the Western Federation of Miners. It is the last constitution adopted by referendum vote of the membership.

Document marked Defendant's 2 for identification.

Q. Will you examine Defendant's Exhibit 2 for identification and show us where there is any provision in it providing for either a member at large or a local at large?

A. Section 1 of Article 1 provides that the organization, the local union, pay per capita tax to the entire organization or the Western Federation of Miners. The Union at large has been in existence for a great many years.

Q. Call our attention to it. Tell us that paragraph. Show us the section.

A. It assumes the same relation to the international organization as any other local union.

Q. I would ask that the witness be requested to answer the question. (R. 344.)

The COURT.—I understood the witness was reading from the document.

Mr. BREEN.—No, he is not reading anything.

The COURT.—Well, if you can, point out anything in the exhibit in your hand providing for membership at large or a union at large.

A. I have answered the question, your Honor, that it bears the same relation as any other local union.

The COURT.—No, you are asked to point out something in relation to it in the constitution and by-laws.

A. There is nothing in the constitution and by-laws only the issuance of charters to local unions. (R. 345.)

The WITNESS.—I am one of the plaintiffs in this

action and have set up a claim of ownership to this property as specified. (R. 346.)

ERNEST MILLS, a witness called on behalf of appellant testified in relation to receiving the application for a charter in 1914, and the forwarding of the same (R. 308–317), and further testified in part (referring to charter) as follows:

The WITNESS.—That was forwarded to the Butte Miners' Union at the time it was dated. I am acquainted with the signature of Mr. Lee, and this is Pat Lee's signature. At that time he occupied the office of Secretary-Treasurer of the Butte Miners' Union. I received this letter in due course of mail from Mr. Lee. (R. 314.)

**Plaintiffs' Exhibit "C"—Letter November 24, 1914, Lee to Mills.**

Hall of

BUTTE MINERS' UNION.

Organized June 13, 1878.

Butte, Mont., Nov. 24th, 1914.

Ernest Mills,
Denver, Colo.

Dear Sir & Bro.

In reply to you concerning the charter we have received it but there is a little dispute about putting it up as some of the members wants a copy of the old charter from Helena, Mont.—we have written their but has not heard from the Sec. of State. I suppose he is busy going over the election returns.

Hoping you will excuse me for not answering your litter sooner but have been sick for two weeks.

(Seal) Fraternally yours,

PAT LEE,
Sec. Tres.

(R. 315.)

Cross-examination by Mr. BREEN.

The WITNESS.—The charter presented here, the charter sent and a correct copy offered in evidence here, to all intents and purposes was intended to be a reissuance of the charter that was lost or destroyed on the 13th of June.

Q. Mr. Mills, is it not a fact that the charter received on or about May 15, 1893, was a copy of a state charter, only briefly changed to meet the requirements, and contains the names on the charter of the members of the Butte Miners' Union at its organization; and is it not further a fact that you asked John Sheehan if he could get ten names—delegates of the Butte Miners' Union—if you could (R. 322) get ten of the names that were on the other charter?

A. The original charter had the names of the charter committee printed on it. The body of the charter said "The Western Federation of Miners of America," and later on the names of "America" was by action of the convention knocked off.

Q. Is it not a fact that at the time of the old charter there was no forfeiture clause of the kind that is contained in the second charter, the following—is it not a fact, Mr. Mills, that these words contained on this charter were not contained in the old charter: "It is agreed that should the aforesaid union withdraw or be dissolved," substantially, or forfeit its charter, then all property, money, books, and papers shall become the property of the Western Federation of Miners? A. That was in the original charter.

The WITNESS.—I know that, because I have care-

fully looked over copies of the charter issued at that time. I may have seen the charter of the Butte Miners' Union, the defendant here, but I never paid any particular attention to it. I have been a member of the Federation since 1899. The federation was six years at least in existence before I knew anything about it. I did not know that at the time of the organization of the Western Federation of Miners, the Butte Miners' Union, this defendant, was the only local miners' union that owned one dollar of property. I know nothing about its financial condition at that time. (R. 323.)

Q. And you know nothing about the organization of the Federation or where it was organized or anything about it, prior to the time you mentioned, 1899?

A. I have read the records. I read the original minutes of the original meeting and they follow very closely. They are in Butte, and I now produce them. I did not say I knew the old charter and what was in it. I simply said I was drawing the inference from the fact that I looked over the copies of the charters at that time, and assumed the charter was the same. I was unable to place W. J. Weiks and Morris on the charter I issued.

Q. Do you know that W. J. Weiks was not on the old charter, and that he was not one of the charter—

The COURT.—The new charter contains these names.

Mr. BREEN.—The first charter.

The COURT.—And the new one has not?

Mr. BREEN.—No.

The COURT.—Then the fact stands admitted that

the reason he did not put them there was not material.

The WITNESS.—I received the letter received in evidence and marked exhibit "C" from Mr. Lee, in which he mentioned, "in reply to your letter concerning the charter, we have received it and there is a little dispute about it being the same. Some of the members want a copy of the old charter from Helena, Montana. We have written there," and so on. I at no time received any communication (R. 324) from this defendant corporation that the charter was accepted.

Q. You never received a communication that the charter was accepted, did you?

A. That communication acknowledged the receipt of it.

Q. Received through the mail, didn't it?

A. Yes, I think it was registered and there was a register receipt, and I have got that, yes.

Q. But you know nothing about what Mr. Lee referred to about a little dispute and so on; you know nothing of that other than what is stated in the letter.

A. Other than what is stated in the letter. (R. 325.)

Q. Mr. Mills, you stated on direct examination that you, or that the Federation, speaking for the Federation, had brought suits and defended suits for the Butte Miners' Union. I don't recall the wording of your answer.

A. They defended suits that were brought against the Butte Miners' Union and Western Federation of Miners in South Dakota. * * * In the suit

I mentioned the Butte Miners' Union did not pay all the expenses and employ counsel and furnish the witnesses. * * * I think the first suit was to set aside the Butte Miners' Union mortgage. The Western Federation of Miners defended the Butte Miners' Union in that suit, and put in a counterclaim (R. 327) other than the mortgage. The Federation proved it was a counterclaim; and the Butte Miners' Union made the President its trustee to act for it. Mr. Moyer did not take that position himself without the knowledge of the Butte Miners' Union, I don't think. I understand you have brought an action against Mr. Moyer and the sheriff to set aside that assumption of trusteeship, and it is pending now in the Federal Court. That was all the litigation I had in mind, the only cause of action I referred to, in that December trial. (R. 328.)

WILLIAM WALSH, a witness called on behalf of appellants testified that he was a member of appellee at the time of the organization of appellant, Western Federation of Miners; that he had examined the charter bearing date of May 15, 1893, and the Aspen Charter No. 6, Plaintiffs' Exhibit "D" (R. 334–335) and that they were similar. On cross-examination by Mr. Breen, the witness testified as follows:

Cross-examination by Mr. BREEN.

The WITNESS.—I was not a delegate from the Butte Miners' Union, the defendant here, to the first convention of the Western Federation of Miners. I was at the meeting of the Butte Miners' Union during the session of the convention in Miners' Union

Hall when they made their report. It is a long time ago and I don't know that I could recall any of the proceedings of that meeting to mind now.

Q. Do you recall the inquiry being made or any inquiry being made by the Miners' Union, the Butte Miners' Union, as to what effect becoming a member of the Western Federation of Miners that was organized would have on its property and effects?

A. I cannot recall any at this time.

The WITNESS.—I recall a motion being made to become a local of the Federation; I recall that such action was taken at that time, but I don't know that I could state who made the motion.

Q. Mr. Walsh, do you recall a discussion at the time as to what effect becoming a member would have on the property of the Butte Miners' Union?

A. All that I can recall is that it was discussed there for several meetings, and for six months prior to the organization, the features of going into this Federation, but I could not recall at this time what, or state positively anything in regard to who made the motion or what the discussion was outside of a general discussion leading up to the organization and its perfection.

Q. Do you recall that at that time the Butte Miners' Union was possessed of approximately sixty thousand dollars in the bank, or some large sum, owned its property and had a mortgage on some Coeur d'Alene property and in the Granite Mountain Hall, a large amount of property?

A. Well, I know it owned its own property, but the exact amount of money in the bank at that time I don't know that I could state positively. (R. 337.)

The above is all of the testimony offered in direct by appellants in the trial court, in so far as the same applied to the question of the acceptance of the 1914 charter, and the 1893 charter.

Witnesses on behalf of appellee were then called and testified in support of its position at said trial, which testimony in so far as the same relates to the wording of the charter received from appellant, Western Federation of Miners on May 15, 1893, and in so far as it relates to the rejection of the charter of October, 1914, is as follows:

CHARLES BAXTER, a witness called on behalf of appellee, defendant below, was called and testified as follows:

Direct Examination.

(By Mr. BREEN.)

Q. Mr. Baxter, were you familiar or do you know anything of the organization of the Western Federation of Miners, or when it was organized.

A. As to the joining of the Western Federation of Miners by the Butte Miners' Union, I know there was a committee appointed to meet with other committees from locals of Miners' Unions in different parts of the country for to get together to try to organize a body for mutual protection and benefit. At that time there were other miners' unions in the vicinity of Butte, and in Montana, such as one at Neihard, and I knew of one in Granite. (R. 353.)

The WITNESS.—I saw the first charter that was received from the Western Federation of Miners hanging in the hall on the wall many, many times, and I was at one or more meetings prior to the adoption of the first charter, from the Federation, when the question came up as to whether the Butte Miners' Union would become members of the Federation; whether they would join in with the new organization that was proposed to be formed.

Q. Was there at any time, or was there in the charter that was received, any clause of a nature referred to here whereby all of the property would be forfeited if they joined the Federation and then saw fit to withdraw. (R. 354.)

A. I have read the charter over several times and I never saw any clause authorizing the forfeiture of the property and the money; I read the charter and never saw it, and I read it from beginning to end.

Q. Will you tell us whether or not the question of what effect a joinder with the Federation would have on the property of the Butte Miners' Union was discussed at those meetings that you referred to?

A. I heard it discussed at one or more meetings, and also on the street corners and in the mine amongst the members of the union, as to what effect it would have us joining the Federation, whether we would be responsible in any way, or whether they could hold our money in any way if we joined. (R. 355.)

Q. Was there any difference between the charter your attention was called to and the old charter? (R. 356.)

A. And my attention was called to the forfeiture clause in the new charter which I could never recall having seen in the old one.

The WITNESS.—There was no other difference existing between that charter that I can recall, and the old charter. Another difference in the charter, in the bottom of the charter there were a lot of names attached to the old charter that were not on the new one, but the body of the charter was practically the same except for the forfeiture clause.

Q. Then after this examination that you made of the charter, that your attention was called to, what was done with the charter?

A. As near as I can recall it, it came under the head of "Good and Welfare'" at the meeting that night. Someone mentioned the fact of its coming up and mentioned it that "we have received a new charter" and one of our members, Pat Leahy, to be exact with the name, picked it up and looked it over and read it, and he said: "We have no use for that," he says, "We don't want to lose our property," and he threw it on the table. (R. 357.)

A. (Continuing.) What I heard him mention was "that we have no use for that," and he threw it on the table, and I think that was the end of it, and there was no other action taken on it at that meeting.

Q. Was this charter that was signed on or about the fifth day of October, or the one bearing date, I believe, of Denver, dated October 3d, was that charter ever accepted by the Butte Miners' Union, a corporation, the defendant here?

A. Never, to my knowledge.

The WITNESS.—The charter referred to the one which bears the date of Denver, October 3d, 1914, to my knowledge was tendered to Charles Mahoney, one of the general officers of the Federation as not being a state charter. Pat Lee made that tender. At that time, Mr. Mahoney said, "We don't want it," or "I don't want it." (R. 358.)

Appellee, defendant below, then offered in evidence Defendant's Exhibit 2 for identification, namely, the constitution of the Western Federation of Miners (R. 369–406), and particularly section 3 of article 1 (R. 372) and section 1 of article 6 of said Constitution (R. 385), and section 4 of article 15. (R. 398.)

The WITNESS.—The property of the Butte Miners' Union was accumulated by the monthly dues collected from the members, and those monthly dues were collected for the purposes of paying the running expenses every month, and paying sick and funeral benefits and also giving donations to a brother who happened to be in need. It was used for that purpose, and that has been the policy since the year 1890, when I first became a member. (R. 366.)

Cross-examination by Mr. HILTON.

The WITNESS.—I stated to the counsel that I was familiar with the phraseology or wording of the original charter, that I had seen it several times and read it, and to the best of my recollection it did not contain any forfeiture clause, and that is right. * * * But one of the reasons which drew my at-

tention to the forfeiture clause was that it was discussed, and discussed repeatedly among members of the union, by the individual members, and also as I stated before at at least one meeting that I was at. The only notice that I ever knew of or heard at all, by motion or evidenced by any record relating to the charter here whereby the charter was questioned because it contained that forfeiture clause, after the receipt of that charter by our membership, was when Pat Lee, who was Secretary-Treasurer, said he sent to Denver, and it was discussed under the head of good of the order. As far as my knowledge goes, it was not discussed except as to the litigation of the matter. Now, I am speaking with reference to the last charter. There was an effort made to return this last charter to the Federation. It was offered to Mr. Mahoney one day when I was up paying my dues at (R. 407) the office. That was the only tender that was made of the charter to return. I could not say whether that was done by reason of any order or action taken by the local. It was done by one of their officers. Pat Lee was the man who tendered that back, and was having a conversation with Mahoney. I cannot tell whether he was authorized to tender it to Mr. Mahoney by action of the local or not. He was one of the officers. Mr. Lee's action in tendering it back to Mr. Mahoney was never afterward brought before the local to my knowledge. In my hearing at the time it was tendered back, Mr. Mahoney did not tell Mr. Lee that if it was the desire of the local to return it that there was a way to do it. Mr. Mahoney, said, "I don't want it." (R. 408.)

JACOB OLIVER, a witness called on behalf of appellee, defendant below, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—My name is Jacob Oliver, and by profession I am a miner. I have lived in Butte thirty-one years, and most of that time I have been (R. 412) a member of the Butte Miners' Union, a corporation, defendant here. I was a member of the Butte Miners' Union prior to 1893. I became a member first in 1885. I recall the organization of the Western Federation of Miners.

Q. Mr. Oliver, prior to the Butte Miners' Union becoming a member of the local of the Western Federation of Miners, was there any argument or discussion as to what their rights, or what liabilities would be incurred by becoming a member?

A. There was considerable.

Q. Will you state what was done and what examination and investigation or understanding was had before the Butte Miners' Union voted to become a member of the Federation? (R. 413.)

A. In the Union Hall?

Q. That is what I mean. I don't mean anything on the sidewalk.

A. There were discussions for several meetings *pro* and *con,* as to the result of the Butte Union joining the Federation. In fact, I was one of the fellows who were opposed to the organization of the Western Federation, and I know—

A. (Continuing.) —and I know one of the points that was asked of the fellows, you might say the

opposition, was this: In case of trouble in the Coeur d'Alenes, there had been trouble over there, and our union was an incorporated body and the other unions were unincorporated, or voluntary associations, and there was any property destroyed or any lives lost, would we be held liable; and we were told frankly, no; and with that understanding we practically, well (R. 414), we were unanimous, finally, in joining the Federation.

The WITNESS.—I recollect when the charter was issued. I could not say exactly what it contained. I saw it hanging there on the wall.

Q. Did that charter that you received contain a forfeiture clause of the kind that is referred to in this second charter or put in the pleadings here?

A. Not to my knowledge.

The WITNESS.—I presume I read the charter lots of times, and I think I would have seen it if it were there. On the charter were a list of, I think, ten names taken from the old charter, or the original charter, members of the Butte Miners' Union; I think it was ten of the original names. I saw the last charter which was received, once.

Q. Did you observe at the time that you saw that (R. 415), that that was or it was not a duplicate of the former charter?

A. That was a very marked; the difference was very marked.

The WITNESS.—The difference was very marked, and anyone would notice the difference. My attention was called to the forfeiture clause in the last charter by, I don't know who, someone in the hall,

one night, and the question was brought up under the order of good and welfare, and I says, "I understood this matter was settled." Someone said, I can't say who, "Why, we can't accept this charter; it is out of the question. If we take this charter Moyer can come and grab our property any time." And I think it was Pat Leahy said, "We don't want this charter, and we don't have it, and we are not going to have it." The charter was never accepted or worked under.

Q. When you observed this charter, did that call your attention to this difference in the old charter as relating to the forfeiture of property?

A. Well, the most marked difference, of course, was the names. That would be the first thing a person would notice that had seen the old charter and the new, because you generally notice the names (R. 416) on a document of any kind; that is the first thing you notice is the signatures.

At this meeting in October, 1914, when the last charter was received, the members just passed it up, unanimously, that it could not be accepted. In fact, they hardly discussed it. I noticed one forcible remark made by Pat Leahy. He said, "We won't have it, and we ain't going to have it; we can't stand for anything like that." The reasons why it would not be accepted were discussed at that meeting, the forfeiture clause there which as Mr. Leahy said, "Why, Mr. Moyer can come here and grab the property, grab everything we got, if we don't comply with the rules and regulations," or something to that effect, "of the Western Federation." I had several

discussions with Mr. Mahoney in regard to the suit then pending in the court in the city of Butte here. (R. 417.)

The WITNESS.—At the time this Federation was organized in May, 1893, the Butte Miners' Union, this defendant, had property, and it consisted of the lot the hall was on, on North Main, and the loan of, I think, it was ten thousand dollars to Granite Miners' Union, and something like fifty or sixty thousand dollars in the bank. That property was accumulated from dues collected from the miners and members. The uses those dues were put to were to pay sick benefits, funeral expenses, and payment of the officers who conducted the affairs of the union. The money that built the hall, the first money, we got some money from W. A. Clark, he made us a loan to build the hall, but the money that paid for the hall came from the miners in shape of dues. The union owned a library at that time. The hall was not in the same condition it is now. It was a stone and brick building with offices and hall. It was considered one of the most substantial buildings in the city. It had two stores. I do not know the exact dimensions of it, nor could I tell exactly the width and length of it, but I think it was something like fifty-odd feet wide and a hundred and forty feet long; or somewhere about that; I don't know exactly. The Western Federation of Miners never contributed one dollar to the property now owned or possessed by the Butte Miners' Union, or being owned or possessed by it, since the birth of the (R. 418) Western Federation of Miners, to my knowledge. I was a pretty

regular attendant, and if they ever did, I should have heard of it.

Cross-examination by Mr. GEAGAN.

The WITNESS.—* * * When I spoke of Mr. Leahy having said something at a meeting of the Butte Miners' Union relative to the charter, I meant Pat Leahy, the policeman. Mr. Leahy said there was action taken by the union as an organization with relation to that charter that night that I speak of. To my knowledge, there was not. We never took a vote on it, to my recollection. I couldn't say there was or was not; but I know at this meeting when that question was brought up by Mr. Leahy, he says, "We have got through with that." That was Mr. Leahy's statement. I could not say whether there was any motion made and entertained or not, and I do not recollect whether there was at any time I was present at the union. I never heard any such motion discussed on the floor at any time while I was present at the meeting. At that meeting, if my memory serves me right, I was a little late when I came in, and there seemed to be a general understanding there that they refused the charter. Mr. Leahy made the most forcible remark. That was all that was done, I believe, at that meeting. (R. 420.)

Q. And at the time that Mr. Geagan refers to in reference to this second charter they sent in October, about the fifth or twelfth of October, the discussion that you had there was—were they discussing this forfeiture clause generally, not alone Mr. Leahy, but the members generally, at the time you referred to?

A. Well, it seemed to be the general understanding there. (R. 421.)

WILLIAM E. DEENEY, a witness called on behalf of defendant being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—My name is William E. Deeney, and I am a stationary engineer. I came to Butte on the 10th day of January, 1885. In those days I was a miner and was mining in the Mat mine, at that time. I mined off and on for fifteen or sixteen years, at that time, sometimes for a company and sometimes for myself. I was a member of the Butte Miners' Union, a corporation, from four days after my arrival in Butte, and remained a member up to 1894 or 1895. I recall the time of the organization of the Western Federation of Miners, in May, 1913. I was a pretty regular attendant of the meetings of the Butte Miners' Union at that time, and I recall visiting the union during the time, visiting the Butte (R. 422) Miners' Union during the times that the Western Federation was in session and delegates forming the Federation. I heard discussions in the Butte Miners' Union as to the purposes and objects of the Federation, and explanations made by the delegates and members of the Butte Miners' Union during that time. During this time referred to, in the early part of May, 1893, I heard discussions as to under what terms and conditions the Butte Miners' Union would accept a charter with the Federation and become one of its mem-

bers. It was discussed for some time before they adopted the charter. The discussion at that time which was very heated on one or two occasions was that we gave no permission to the Western Federation to have any claim to the property, money, or anything belonging to the local here in Butte. At that time the Butte Miners' Union owned the Miners' Union Hall, which was destroyed recently; and they had made a loan to the Granite Mountain Miners' Union, they had organized; they had made a loan to the Coeur d'Alene country in 1892, and they had, I think, between eighty and fifty thousand dollars in the bank.

When we first agreed to become a local of the Western Federation of Miners, I examined the charter presented to the Butte Miners' Union for its acceptance. It was presented to the members sitting on the east side of the hall by a member visiting here, I think by the name of McCoy, and we looked it over. I remember I did. This was a draft, and this draft was discussed in the Union. This charter (R. 423) did not contain any forfeiture clause of the property.

I later saw the printed charter that was accepted by the union and hung on the wall. I think that was printed by Johnny Fogarty, who was then a member of the union, and was proprietor of the "By-Standard," a local paper here, and he asked, I believe, for the privilege of printing or doing that work at that time. There were a number of names on that charter, I don't know how many, the majority or nearly all of them are dead. The charter in size was about fourteen inches by twenty-two inches or

twenty-four inches, while I am not swearing to that, that is my recollection.

Q. Do you know whether or not this charter was examined for the purpose of preventing any forfeiture of the property or getting in any shape that would hold the property or the Butte Miners' Union liable?

A. That was the purport of the argument; that is what caused all the discussion, was to know whether it contained a clause of that kind or not, and on finding out that it contained no clause of that kind, I think you were the man that moved that it be (R. 424) adopted, without that clause being inserted; I am sure you are.

The WITNESS.—At that time I am sure there was no forfeiture clause of any property or any property of the union. That is what caused all the discussion. That was the draft. Afterward I looked at the print, and it was in accordance with the ruling of the draft. I examined the printed charter after to see if it was a correct reproduction of the draft. I remember on one occasion I had some misunderstanding with James C. Duffy, who was afterward secretary of the union in Granite Mountain, about a matter, and we traveled to the Hall and examined; and some others, and I examined it on several occasions. I mean when it was first presented, first accepted and hung up and framed. I examined it at that time and seen the printed form was the same. I am a member of the Western Federation at the present time, belonging to the Stationary Engineers, 83.

The WITNESS.—I know the purpose of organizing the Federation, the reason for organizing it. I know from prior discussions that the intention was that there should be one general organization of miners in the State of Montana and in the west, that there should be one constitution and be one initiation, and that on the payment of one dollar they could be (R. 425) transferred from one local to another. I have many times read the first constitution issued by the Federation of Miners.

Q. Did that constitution contain any forfeiture clause, or authorize the taking of the property of any withdrawing local from the Federation?

A. No, there was no clause of the kind to my knowledge in the Constitution—that is, the first constitution.

The WITNESS.— * * * The moneys and property of the Butte Miners' Union, a corporation, was accumulated by a dollar a month membership, by twenty-five cents per quarter and a dollar a year—I thought you asked about the Federation. The Butte Miners' Union paid a dollar a month. Further moneys were accumulated by picnics, by little entertainments, and by the renting out of the building and the hall after it was completed (R. 426). This money that was collected from those dues and from entertainments and rentals was to be used for the support of widows and orphans, burying the dead and paying sick benefits to those who were unable to support themselves and paying dues. The Butte Miners' Union, from the time that I became a member of it, paid out of this fund funeral expenses and sick

benefits for its members, and took care of orphans and widows of its members regularly. They purchased a library. During the time that I was a member of the Butte Miners' Union, after the organization of the Federation of Miners, the Western Federation of Miners never contributed one dollar or one cent in money, or did they contribute any other property to the Butte Miners' Union, a corporation.

Q. As a member of the Stationary Engineers and a local of the Western Federation of Miners, are you authorized to visit and allowed to attend meetings of the Butte Miners' Union? (R. 427.)

A. Yes, sir.

The WITNESS.—I am familiar with the business dealings between the Butte Miners' Union, a corporation, and the Western Federation of Miners, during the years that I have been a member of the Engineers' Local up to the time of the withdrawal of the Butte Miners' Union; been familiar with the relationship between them, and during the period of time last mentioned the Western Federation of Miners never contributed one cent or one dollar or any other kind of property to the Butte Miners' Union.

Q. Mr. Deeney, the plaintiffs in this action have alleged that they have brought suits in actions of law on behalf of the union. What do you know as to that?

A. I don't know that they ever paid for the fighting of any suits. (R. 428.)

The WITNESS.—This charter marked Defendant's Exhibit 3, the charter received by the Butte

Miners' Union on or about October 5, 1914, is not a duplicate of the charter received by the Butte Miners' Union on or about the 15th day of May, 1893; it is not a duplicate of the one that was destroyed. It varies and differs from the one that I first saw, the original draft, and later the printed form of, with reference to that clause as to the property rights and so forth. I can't exactly word it as it is there.

Q. Are there any of the names of the honorary roll on this charter that was just shown you?

A. I didn't notice the names; I just read the witnesses in the center of it. Mr. Moyer and Mr. Miller, yes.

There are no names of the old charter members of the Butte Miners' Union that were referred to by Mr. Oliver as the honorary roll. It is hard to recall the names of the men that were on there, it is a long time ago—John Eddy, one of the first members, and Bob Feltz, who was secretary in 1886—well, I forget the names of those who were on it. I would not attempt to testify to the names.

Cross-examination by Mr. HILTON.

The WITNESS.—I do not remember when the first convention organization of the Western Federation (R. 429) of Miners was dated. It might have been in the neighborhood of on or about the same time that I have testified that the Butte Miners' Union local obtained the charter, the 15th day of May. I believe it was exactly that day that the Western Federation of Miners was organized. I am not sure who was the first president of the organization. I think the name was Joe Thomas, but I am not sure.

I don't remember the name of the president of the original organization, the first organization of the Western Federation of Miners, but I think the name was Joe Thomas. The original issue of charters was made or had by the Western Federation of Miners at that time, after being thoroughly discussed in the neighborhood of May, 1893, and about the time when the Butte Miners' Union received their first charter. I do not remember how many charters were printed by order of the Federation at that time. I saw the draft of that charter that was ordered by that body. I believe the man who did the printing, John Fogarty, showed it to me. I would say that the original charter first issued by order of the Western Federation of Miners did not contain the forfeiture clause. I am speaking of the charter the Butte Miners' Union had and not charters in general. I do not remember who signed the first charter issued to the Butte Miners' Union as president and who as secretary. But I think I just stated I thought Joe Thomas was president. I have no recollection as to who was secretary. The charter that I saw in 1914 contained that (R. 430) clause that we objected to in 1893. The charter that was accepted in 1893, there was a heated discussion on one or two occasions about adopting it as presented by that committee from the convention, and by eliminating that clause it was adopted. I do not know that I ever saw any record of that action, but I should think that there was some made of it. There is nothing of record in existence now that I know of that would show what the action of the local was in the

adoption of that charter. There is nothing of record that I know of on the part of the Butte Miners' Local repudiating the last charter of 1914. I don't know of any of the documents that now remain. I was present at a time when a discussion was had when that was objected to because it did not conform to the other one and the action taken was that the local would not accept it as presented with that clause in it, the charter with reference to the forfeiture. That was in 1893, and I think it was in May, or the latter end of April. I think the result of their action was made a matter of record, but I am not sure. There was a motion made by Mr. Breen, who was then a member, that the charter be received by eliminating that clause, and it was seconded, I think, by a man named Michael—I am not sure—McLeod, and action taken that it be adopted by eliminating that clause. I think that was made a matter of record. Yes, it was a matter of consequence, and it would be.

Redirect Examination by Mr. BREEN.

The WITNESS.—I do not know what has become (R. 431) of the records of the Butte Miners' Union that were in existence and used at the time I referred to in 1893, since its birth, except by hearsay. I don't know what happened to it. I understand they were all destroyed on the 13th of June, 1914, or the major portion of them.

FRANK O'CONNOR, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—My name is Frank O'Connor, and I have resided in Butte about twenty-seven years.

I am a miner, and have been a member of the Butte Miners' Union. I joined the defendant, the Butte Miners' Union, in the month of February, 1891, and was a member of the Butte Miners' Union in 1893, during the spring months. I have held the offices of secretary, president, treasurer and several other offices in the Butte Miners' Union. I was president four or five terms, I believe. I could not tell you just exactly, because on account of resigning as president I would not be able to tell you the correct date. I was a member of the Butte Miners' Union, this defendant, at the time of the formation of the Western Federation of Miners.

Q. Were you present at any meetings when any question of organizing the Federation or becoming a local of the Federation, prior to the 15th day of May, 1913? (R. 432.)

A. Yes, I was at the meetings, but I couldn't swear that I remember anything just what happened. I was at the meetings, any number of them.

I was a regular attendant at the meetings when my shift was such that I could attend.

Q. And was this matter of becoming a local of the Federation ever discussed while you were present prior to May 15, or on or about May 15, 1913?

A. I would swear that I heard it discussed, but then I could not give any day or date for it.

It was the regular discussion at the meetings, I know, but I could not give the dates. I have seen the charter received from the Western Federation accepted by the defendant, the Butte Miners' Union,

bearing date of May 15, 1893, the first charter, and have examined it.

Q. Describe it as far as you can generally; I mean describe, that is as far as contents and what was on the face of it, as far as you can, generally.

A. From the discussion that came up at the meetings on the charter, I have formed my opinion—

Q. Well, from what you seen, I mean.

A. Yes,—

Q. Well, tell us what that was. What did the charter provide, do you understand me?

A. I do, yes.

The COURT.—Well, let him take this Aspen charter and read it over and tell us what difference there was.

A. I will answer the question, if your Honor (R. 433) please, on them grounds. When the new charter came in, that is the time I offered my objections to this charter, that is, the new charter.

Q. I don't mean the new charter. The one I am talking about is the old one, the first charter received, that was in use until destroyed on the 13th of June, 1914; the old charter and not the new one, do you understand me?

A. I do. I seen the charter and read it over.

The WITNESS.—It did not contain a forfeiture clause of the property of the Butte Miners' Union. I recall the Butte Miners' Union, this defendant, applying for a reissuance of this charter that was destroyed on June 13, 1914. I was in there I believe, when it was taken up there. I recall the arrival of the charter that came about that request. This char-

ter that was received some time in the early part or the middle part of October, 1914, was not a duplicate or reissuance of the charter that had been destroyed and that had hung for years on the wall. It differed in that they controlled the whole property; they would take all our property; that is, they would take the Butte Miners' Union property under the clause they had in here, by accepting the charter they would take all our property and we objected to it.

Q. Was this charter that arrived in October, 1914, ever accepted by the Butte Miners' Union, the defendant here? (R. 434.)

A. I was not at the meeting that it was accepted or rejected, but we objected to it before the meeting. The charter was not brought before the meeting at any time I was present and any attention called to it or any discussion had on it as I remember; not at a meeting, but it was called to our attention outside, before the meeting. At that time some of the members that were there talked it over and said, "That charter is no good," and said not to accept it.

Q. What action was taken if any that you know of at the meeting? A. I was not at the meeting.

Q. I mean at a session of the Butte Miners' Union?

A. Well I was not at the meeting that it was rejected.

Q. Well, what do you mean when you say, "rejected?"

A. Well, it was rejected before it went to the meeting.

We rejected it before it went to the meeting. I was not at the meeting it was taken up. When the

charter came it was read over and I think Mr. Leahy and some of them objected to the clause in it, and we decided that we would not accept it, that is, not at the meeting, but outside of the meeting. That (R. 435) was some time prior to the meeting night. I do not know what was done at the regular meeting night.

During the time that I was a member of the Butte Miners' Union here, prior to 1893, the Butte Miners' Union had a constitution and by-laws. There ought to be some of those constitutions in existence now; I might have one home myself; I believe I have of 1893, but maybe not.

Q. Do you know whether or not there are any of them preserved by the Butte Miners' Union, the defendant here, or any of them saved out of the wreck of 1914, June 13th?

A. I don't know that I have; I might have one.

The COURT.—You are asked whether or not you know if the Union has preserved any or not.

A. The Union has not preserved any.

Q. Do you recall whether or not there was a provision in the constitution in use in 1893, the constitution of the Butte Miners' Union, the defendant here, providing for the payment of funeral expenses and sick benefits and the care of dependent ones of deceased members?

A. During the time that I have been secretary there was a standing offer that no member would have to be buried in a pauper's grave.

The WITNESS.—There was a provision in the constitution providing for a certain amount each

week during sickness, and a certain amount for funeral expenses, and so on. That provision remained during the time that this Butte Miners' Union was a member of the Western Federation of Miners after 1893, up to the 13th of June, and later there have been funeral benefits paid. I mean the 13th of June, 1914, the destruction of the hall. The Butte Miners' Union, a corporation, the defendant here owned property in 1893 and that consisted of their hall; they loaned money to the Granite Miners' Union, also a corporation; and they loaned to the Black Hills—I could not answer prior to the Federation, the organizing and joining the Federation. They did have property prior to 1893. They owned the hall and they owned money besides, and it was, I believe, in the Clark's bank at the time. (R. 437.)

PAT LEAHY, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—My name is Pat Leahy, and I have been a resident of Butte nineteen years and a half. I have been a miner ever since I have been here except for the last six or seven months. I have been a member of the Butte Miners' Union and was a member of the Butte Miners' Union during the year 1914, and have been such member since October, 1896. I did not during the time I was a member of the Butte Miners' Union observe or examine the charter of the Butte Miners' Union received from the Western Federation of Miners during the month of May, 1893, because I was not a member then, but did ex-

amine it since I have been a member. The charter that I now refer to did not contain a forfeiture clause of the property in case of a withdrawal, suspension or dissolution. I guess that charter that was received in 1893, was blown to ——, or some other foreign country, wherever it went, I don't know, but the hall was blown up. I never saw it after the 13th of June. I was present when an application was made for a reissuance of that charter. I read the charter that came in response to that request and told the boys that it would not be advisable to accept because there was a clause in it that did not suit me, and that changed the intent and purposes of the former charter. Defendant's Exhibit 3 is the one. There were other differences besides the forfeiture (R. 441) clause referred to in this charter, Defendant's Exhibit 3, and the charter that had been hanging on the wall. There was only the names of Mr. Mills and Mr. Moyer on the new charter and there were the names of about twenty, I believe, charter members of the Butte Miners' Union, No. 1 on the previous one.

Q. When you say "charter members," do you mean charter members of the original organization?

A. Yes, sir.

Q. Or members of the other Federation?

A. No, I mean the original.

The WITNESS.—Defendant's Exhibit 3 arrived in Butte sometime in October, 1914. There was a bunch present when it was opened and examined. I forget their names now; couldn't recall their names; quite a bunch in the room before we went to the meeting.

Q. What was done at the meeting, or was this charter taken up at the meeting?

A. I made a little talk about this proposition of the charter and said how it read, "Well," they said, "it ain't worth making a motion about it." (R. 442.) That was in our meeting hall, North Main, during the meeting.

Q. What was the discussion with regard to the forfeiture of the Miners' Union Property by the terms of the charter that meeting that you refer to?

A. Well, they were holding the property,—

Q. Well, I asked you if there was a discussion, if the contents of the charter was discussed?

A. No, they said it was not worth discussing. I don't know who said it was worth discussing; some of the boys that were there, I don't recall now; couldn't recall his name, but some of the boys that were there at the meeting. At that time they threw it in the waste-basket, because the charter read that the W. F. of M. was to take our property, money, and everything belonging to the local here, under the conditions of the charter, I guess, providing that we did not suit them. The charter received did not comply with the request for a charter. They read the charter previous to the meeting in the assembly-room, read it over, and I says, "Boys, here we go; if we will accept this charter." So when I brought it up at the meeting in talking about it, they said, "Don't waste your time," under the head of Good and Welfare of the meeting, and when I brought up this matter they said, "Throw it in the waste-basket." The sum and substance of the charter was to take away all our

property and money, and everything belonging to us and ours.

Q. Well, did you or did the Butte Miners' Union (R. 443), a corporation, receive any correspondence, or were they in any manner recognized, or receive any quarterly reports from the Western Federation of Miners, after this month of October, 1914?

A. No, sir.

Q. Were they in any manner recognized by the Federation after the letter written by Mr. O'Neill, except by lawsuits since the date of that letter?

A. No, sir.

Cross-examination by Mr. GEAGAN.

The WITNESS.—I have never before seen Plaintiff's Exhibit "D" in this case, which you have handed me for inspection. I have examined it. It is not similar to the original charter of the Butte Miners' Union received in 1893. There is a good deal of difference there that I would have to go through. It differs in this respect: "It is hereby agreed in acceptance of this charter that the aforesaid union shall (R. 444) conform to the terms, rules and regulations, and in default thereof this charter may be revoked." That was not in the old one. With the exception of that it is the same as the old one, in the body of the charter, but in the old one, the names of the members, the charter members; in our old charter, the names of the charter members were in it right underneath the charter members. I could not say that the names underneath were the same as the names underneath on this one; I couldn't give you the names that were there. That charter was

signed by John Gilligan and W. J. Weeks, as president and secretary, but that is the Aspen charter of Colorado, and our charter belonging to Butte, Montana.

Q. The Aspen one was one of the original ones of the Federation, was it not?

A. I didn't look it over that close.

Q. Then you don't know whether that was or not, do you?

A. Well, it was the Aspen Miners' Union, certainly it was a local.

It was some meeting in October, 1914, I couldn't exactly tell you, that this charter was thrown in the waste-basket. It was not thrown in the waste-basket till after when we offered it to Mr. Mahoney and he would not take it. That was not at a meeting. To the best of my recollection I believe it was Mr. Lee who threw it in the waste-basket. I could not exactly say that I attended all the meetings during the fall and winter of 1914, and spring of 1915, of the Butte Miners' Union, but attended quite regularly, I was (R. 445) a regular member and took an active interest. I was elected an officer during the year 1915.

Q. Now, at any of the meetings you attended during 1914 and 1915, after the receiving of this charter, was there any action taken at the meeting rejecting this charter?

A. Well, they would not even take it into consideration after reading it?

Q. Will you please answer my question? (Question read.) A. Yes, there was, sir.

That was at a meeting some time in October, but I

could not exactly tell the date of the meeting. At that meeting I talked the charter, and they said, "It ain't worth talking about. Throw it in the waste-basket." I don't know who said that; some of the boys that were present in the hall; members. That was at a meeting, but I don't know who were present at that meeting; I couldn't say who were present. I am not taking a memorandum of everybody that were present at the meeting. I don't think there was any motion made with regard to the rejecting of it. It was just simply the expression of somebody present to that effect, to throw it in the waste-basket. They didn't think it was worth a motion. The remark that I have stated to you was merely the expression of everybody present at the meeting; everybody present said that, and they were members of the Butte Miners' Union. I could not tell you who they were, as I told you previous to this. They all expressed their opinion at once. All at once said, "Throw it in the waste-basket." There was no action at any other (R. 446) meeting at which I was present with regard to this charter in 1914 and 1915. In 1914 or 1915, but I couldn't recall the date of the meeting, a written communication was ordered forwarded to the Federation, with regard to this charter, at which meeting I was present. I could not recall the man who made that motion. It was a motion that they would not accept it. I don't know who made the motion. I don't know whether such a resolution was ever sent. I wasn't the secretary. I would not positively state whether that resolution was in the form of a written resolution or an oral

resolution, and I don't know who made it. That was after the waste-basket incident. The waste-basket incident that I now refer to was at the time it was handed to Mr. Mahoney. The tender to Mr. Mahoney was made in the office of the organization, Butte Miners' Union, in the office of the anteroom of the Butte Miners' Union. I couldn't state for sure who were present. I know Mr. Lee was the man who handed it to Mr. Mahoney, and he wouldn't take it. That was not at a regular meeting of the Union.

Redirect Examination by Mr. BREEN.

Q. At the time that this reference was made that it was not worth considering, was there any statement made as to why it was not worth considering?

Mr. GEAGAN.—We object to that as repetition, having been gone into on direct examination, leading, and suggestive.

Which objection was by the Court overruled, to (R. 447) which ruling the plaintiffs then and there duly asked for and were allowed an exception.

A. Because we had read in the charter that all moneys and properties belonging to the local was to become the property of the W. F. of M. and there was only two names signed to it, that is, the secretary and president of the W. F. of M.

Q. Your attention was called to this Aspen charter, known as Plaintiffs' Exhibit "D," and Mr. Geagan asked you if it was similar, and you read, "further agree that should the aforesaid union—further it is agreed that should the aforesaid union withdraw, or be dissolved, suspended or forfeit this charter, then the property, moneys, books and papers shall become

the property of the Western Federation of miners." Was that in the original charter that was lost or destroyed June 13th, 1914? A. No, sir.

Q. Then when Mr. Geagan asked you if, ending at the words "Western Federation of Miners," if it was similar in other respects, did you mean to give the Court the impression that the forfeiture clause that was not read at the time, was in the old charter?

A. No, sir.

(Witness excused.) (R. 448.)

JAMES J. MAHER, a witness called on behalf of defendant, being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The WITNESS.—On the first day of September, 1896, I became an officer in the Western Federation (R. 456) of Miners. Charters were issued during my term of office. There were a number of our charters, the Western Federation of Miners charters, returned for certain reasons. Some of the locals went out of existence, and some became dissatisfied. The Granite Mountain Union withdrew from the Western Federation of Miners, the Western Federation of Miners did not attempt to claim to own or control or secure possession of its property; they did not do anything about it.

Q. At that time the Granite Mountain Miners' Union owned a large hall and considerable property, did it not? A. Yes, sir.

The WITNESS.—There was no claim made as to the ownership of any property owned by any local that withdrew from the Western Federation of

Miners during my term of office. There was scarcely any property in any local that became defunct, outside of the Granite Mountain property. Other property was just the charter and rituals and books. Outside of that no property was returned. I was an officer from September 1st, 1896, to June 1st, 1901. (R. 457.)

Cross-examination by Mr. GEAGAN.

The WITNESS.—Those books was all the property the other unions had, outside of the Granite Mountain. The Federation never brought any action against the Granite Mountain. I do not say that the charter of the Granite Mountain Union did not provide for the forfeiture of its property or the turning over of the property. They returned the charter and everything belonging to the Federation, I don't know whether it contained that same clause or not. They returned the charter as it was and I did not look it over. It was the same charter as the other; the same as the Aspen charter. (R. 458.)

PAT LEE, called as a witness on behalf of defendant, being duly sworn, testified as follows:

Direct Examination by Mr. BREEN.

The witness testified in relation to a petition circulated among the other local organizations of the appellant, Western Federation of Miners, to wit, praying for the recall of appellants Moyer and Miller and executive board member, Lowney (R. 459), and in relation to a circular letter in relation to said petition by the appellant, Charles H. Moyer. (R. 460, 461, 462.) Further testifying to a suit brought

against appellee by appellants, Western Federation of Miners, Charles H. Moyer, Guy E. Miller and One Other, Ed O'Byrne, Plaintiffs, vs. Martin Scahill, Patrick Lee, Patrick O'Neill, Mike A. Sullivan, James Ryan, James Walsh and Patrick Quigley, Defendants (R. 95–110), and the answer to same (R. 110–124), and further testified as follows:

Q. Was it ever, in your presence, tendered to Mr. Mahoney? (R. 463.) A. Yes, sir. (R. 464.)

Cross-examination by Mr. HILTON.

The WITNESS.—* * * As soon as I received that charter, I was aware that it did not conform to the old charter. The last charter was the charter which was tendered by me to Mr. Mahoney. That was not in the month of October, but it might be in December or January. (R. 464.) After the receipt of the charter I immediately was aware that it contained a provision that the original charter did not contain. We still continued to act with the Federation officials after I discovered that fact, because they sent in their blanks and I sent in the report for the month of October. After I determined that there was this error or misapprehension, whatever I might call it, in the issuance of the charter, we were working under the old charter. We wanted a copy of the old charter back again. When we did not receive that we still continued our official relations with the Federation after we discovered that the last charter was all we had, for about a month or maybe less. (R. 465.)

Redirect Examination by Mr. BREEN.

The WITNESS.—I recall the letter I wrote to

Mr. Mills on November 24th, 1914. In that letter I notified him that the charter was not satisfactory. I stated to Judge Hilton that we continued to work under that charter. We had been working under that charter from the date of its destruction right along. There was a reason why the Butte Miners' Union did not withdraw formally from the Western Federation of Miners prior to the date of withdrawing. I think it was some time in January that we wanted to withdraw, but our local officers advised not withdrawing while the suit was pending. (R. 470.) We had taken legal advice as to withdrawing, early in January, and were advised not to until the suit was determined. (R. 471.)

Appellee, defendant in the lower court, then announced that it had no further testimony to offer, whereupon appellants called the following witnesses in rebuttal.

CHARLES E. MAHONEY, a witness heretofore on the stand, being recalled by plaintiff in rebuttal, testified as follows:

Direct Examination by Mr. GEAGAN.

The WITNESS.—I am the same witness who was on the stand yesterday in this case. I was in the courtroom during the giving of testimony by members Lee, Leahy, O'Connor and Oliver, and heard the testimony of those gentlemen with regard to the handing of a charter to me. That is the charter in question here of October date. At that time I informed them that all matters should be sent to the International Office of the Western Federation of

Miners. I have been a member of The Butte Miners' Union for several years. (R. 473.)

Q. Did you ever see the original charter of the Butte Miners' Union in the Western Federation of Miners issued in 1893? A. Yes, sir. (R. 474.)

Q. Do you know whether or not that charter contained the clause that is in the charter of October, 1914, with relation to the money, books and property of the Butte Union? Calling your attention to Defendant's Exhibit 3, which is the October charter, and the clause therein relating to what should become of the property in the event of withdrawal, suspension and so forth.

A. The contracts in both charters were identical. The contracts in the two charters are identical, the one previously destroyed in the wrecking of the hall, and this charter here; that is the wording of them.

Cross-examination by Mr. BREEN.

The WITNESS.—I think it was in the early part of 1912 that I became a member of the Butte Miners' Union. (R. 474.)

PATRICK MEANEY, a witness called on behalf of plaintiffs in rebuttal, being duly sworn, testified as follows:

Direct Examination by Mr. GEAGAN.

The WITNESS.—My name is Patrick Meaney, and I reside in Butte, having resided here thirty-seven years. I became an active member of the Butte Miners' Union, in April, 1895, and contributed towards the first money that was raised to build the present Miners' Union Hall, in 1881. I was em-

ployed at the Star West. I was acquainted with the original charter that was issued to the Butte Miners' Union by the Western Federation of Miners, in 1893, and saw it there hanging up on the wall, all the time after, and numerous times after that. I read it. There was a clause in the original charter as originally issued to the Butte Miners' Union providing that in the event of withdrawal or suspension or for the other causes named therein there was to be a change of the ownership of property, or that the property was to become the property of the Western Federation of Miners. In the old charter of the Butte Miners' Union there was a provision that if the charter should be revoked or the union should withdraw or be suspended from the Western Federation of Miners, that the property would revert to the Western Federation of Miners, and that was the general understanding when the Western Federation of Miners was formed. That provision was in the (R. 475) original charter that I saw in the Butte Miners' Union Hall, the one that was issued in 1893. The organization was formed in the Miners' Union Hall, in Butte, in the month of May, 1893. The Butte Miners' Union issued the call for it, and Mr. Breen made the motion appointing a committee of five of the Butte Miners' Union, which constituted Tom Nolan, Charles O'Brien, William McLean and John Gilligan. They communicated with the various miners' unions throughout the west, for the purpose of meeting in Butte some time in the middle of May, I have forgotten the exact date, for the purpose of forming a western miners' organiza-

tion or a miners' organization of the west. They had not determined the name of it.

Cross-examination by Mr. BREEN.

The WITNESS.—I first became a member of the Butte Miners' Union, an active member, in January, 1895, and by "active member" I mean a dues paying member. Prior to that time I had not (R. 476) been recognized as a member of the Butte Miners' Union, but I was president of the Workingmen's Union. I did not attend the meetings of the Butte Miners' Union, and was not a member, and did not pretend to join an organization that I did not consider I was following the vocation of its members, and I should not be admitted as a *bona fide* member like others did. The time I became a member was approximately two years after the organization of the Western Federation of Miners.

I know that you made the motion appointing the committee, because we had the people's headquarters, and it was your object to become the first president of the Western Federation of Miners, but we saw to it, as members of the people's party, that we had enough men there in the Miners' Union Hall to not allow you even to attend the first convention and that you were not even elected as a delegate. You tried to be president of everything that came up from a labor standpoint in the State at that time. At that time the Butte Miners' Union had property as also did the Granite Mountain.

After I joined the Butte Miners' Union in 1895 I went to Helena, but not necessarily to run for State

Senator. Since that time I have never been a member of the Butte Miners' Union. I did not go to work at that time in the Original Mine for the period of one day, for the purpose of joining the Butte Miners' Union. At the present time I live in Butte on Ohio Street, and my business is mining, out in Jefferson County. I have some claims out there. I have lived in Butte all winter. Mining is my business.

I went in the Butte Miners' Union Hall and saw the charter the day it was hung up, or the day after; I don't recall the date; it was after it was hung up. I was president of the Workingmen's Union and I was secretary of the Labor Temple, and that occupied three nights out of each week during several years, and I had access to all of the charters, and I read all of them, and made it my business to read them. When this charter was hung up it was framed, and had a glass front. I don't recall any drapery being on it. This charter which was hanging up contained five names, Joe Poynton, Bill Cunningham, but the others I cannot recall. There was John Gilligan, President and W. J. Weeks, Secretary. Poynton's name was afterward stricken from the charter. I do not recall John Eddy's name being on that charter, neither do I recall Pat Colm's nor Frank Shovlin. I read that charter after it was hung in the hall. My business took me in there most every day. It is not a fact that I am appearing as a witness in this case because of my feeling against Mr. Breen. (R. 478.)

J. C. LOWNEY, a witness called on behalf of plaintiff, in rebuttal being duly sworn, testified as follows:

Direct Examination by Mr. HILTON.

The WITNESS.—My name is J. C. Lowney, and I reside in Butte, having resided here twenty-seven years. I am not a member of the defendant corporation. I am a member of the Western Federation of Miners, and have been a member of that organization since it was organized in 1893, and occupied the official position in that order of member of the executive board. I was in Butte in 1893, during the fall of that year and during the spring of that year. I was familiar with the original charter issued by the executive board of the Western Federation of Miners in convention assembled in May or June of 1893, delivered to and used by the Butte Miners' local. I saw it first hanging up in the hall on the north side of the Miners' Union Hall, and had occasion to inspect it several times as a member of that organization. I was acquainted afterward with a new charter under date of October 3d, 1914, that was sent to the local organization.Those two instruments were identical in form, in substance. The clause was identical and alike that provided in each for the forfeiture of the property and money of the local organization in case they became defunct and went out of business. (R. 569.)

Cross-examination by Mr. BREEN.

The WITNESS.—I said I was a member of the Butte Miners' Union in May, 1893. I am not acquainted with the fact that Charles O'Brien, a

former member, now deceased, opposed having anything to do with any organization that would call for a forfeiture of any property, and that the union unanimously refused to have anything to do with a central organization that would confiscate their property if they were dissatisfied with the way things went, and that it went on for some time, this discussion. I am not acquainted with that fact. I am a member of the executive board and have been since June, 1906, and have been on a salary practically ever since.

Q. Do you remember a convention of the Western Federation of Miners in Denver, when everybody but yourself, or when you were the (R. 570) contesting delegate, you and Mr. Duffy, and when you were seated the Butte delegation withdrew and returned to Butte?

A. Yes, sir. I did not at that time examine that charter at the request of Mr. Moyer, and consult counsel to see if the union could not be suspended, and the property confiscated. I never met Mr. Moyer for two years after that. I do not know of my own knowledge of Mr. Moyer's taking such action. I KNOW THAT JOHN H. MURPHY, I WAS INFORMED OF THAT MATTER, JOHN H. MURPHY, a FEDERATION ATTORNEY, DREW SOME PROCESS, WHICH WAS FURNISHED YOU ON SUCH MATTER, A GENERAL BRIEF. I DO NOT REMEMBER YOU MAKING THE ANSWER, "FORGET IT," THAT I DIDN'T HAVE A CHANCE, BECAUSE YOU RETAINED THE BRIEF AND HELD

ON TO IT. THIS BRIEF WAS ABOUT THE RIGHT OF GENERAL ORGANIZATIONS TO SUBORDINATE LODGES, AND QUOTED AUTHORITIES THROUGHOUT THE COUNTRY. I do not recall that Mr. Murphy's brief requested you to investigate that and see if the property could not be taken. I will state in answer to my statement that the Butte Miners' Union immediately sent another delegation to replace the delegation that bolted, and that was the next week. I DON'T RECOLLECT THAT THIS ACTION THAT I REFERRED TO BEING TAKEN BY A LEGAL REPRESENTATIVE WAS IMMEDIATELY AFTER THIS BOLT. I KNOW THAT YOU WERE FURNISHED A BRIEF PROBABLY A YEAR LATER, SOME TIME LATER, BY JOHN H. MURPHY. I did not see your answer; never got any answer from you that I remember.

Redirect Examination by MR. HILTON.

The WITNESS.—During the time that counsel (R. 571) has interrogated me concerning an interview which I might have had with Mr. Moyer, Mr. Moyer was in jail.

(Witness excused.) (R. 572.)

The above contains practically all of the testimony produced in the trial court in so far as it relates to the wording of the charter of May 15, 1893, and the rejection by appellee of the charter of October, 1914. At this time we desire to call the Court's attention to the peculiar fact that the appellants did not ask the witness Mr. Mahoney when first on the stand about the alleged forfeiture clause in the charter of

May 15, 1893, and neglected to call the witnesses, Mr. Meaney and Mr. Lowney until they were produced in rebuttal.

It will be observed that Mr. Mahoney testified that he became a member of appellee in the early part of the year 1912, a period of about nineteen years after the birth of the appellant, Western Federation of Miners.

Appellants then called Mr. Lowney and Mr. Meaney, Mr. Lowney stating that he was familiar with the reading of the original charter, and that it contained the forfeiture clause in question. On cross-examination he admitted that the delegates from the defendant corporation (appellee here) had withdrawn from the convention of the plaintiff, Western Federation of Miners (one of the appellants) held in the City of Denver, Colorado, in 1906, and that a short time thereafter the Federation had instructed its then attorney, John Murphy of Denver, to look into the matter of whether or not the Federation could get control of the property of this appellee, provided it should suspend appellee (defendant below), and that the said attorney had briefed the matter and had sent the brief in question to an attorney of Butte, Montana (appellee's present counsel) for the further purpose of investigating or proceeding further. He further testified that he did not know what advice or information Mr. Murphy had received from myself. It appearing from the said testimony that defendant's and appellees' present attorney was consulted in relation to that matter, it placed and still places the said attorney in a rather embarrassing

position as it shows that at some period of time between the years 1906 and 1908 the relation of attorney and client existed between a portion of the present appellants, and defendant and appellee's present counsel at that time and for the very purpose of this suit, which being a confidential relation precluded counsel from being a witness in the case below, and embarrasses him in arguing, not only the testimony of the witness, Mr. Lowney, but Mr. Meaney as well. Mr. Meaney testified that he had lived a long time in Butte; that he did not become a member of the defendant corporation (appellee here) for approximately one year and eight months after it became a local of the appellant, Western Federation of Miners, but he did know that the charter of May, 1893, contained forfeiture clause in question because (from the outside) he had taken an active part in the election of delegates to that convention for the purpose of thwarting the wishes or ambition of one of the then members of defendant corporation (appellee here), and was sure that he had read the charter in question, either the day on which it was framed and hung up or the day after. That by hearsay he knew all of the proceedings in relation to the election or appointment of delegates who made the motions relative thereto, and had packed the meeting for that purpose; that about one year and eight months hereafter he became a member of this defendant corporation (appellee here); that he had remained a member for a few months and then removed to Helena; that the then member and person he was opposed to is appellee's attorney in this action. For the reasons

above stated counsel does not care to comment on the testimony of the last-named witness, but in view of all of the testimony and all of the facts and circumstances appearing in the case, we submit to the candid consideration of this Court, does it look reasonable that defendant corporation (appellee here) as shown by the record, predating its birth as an industrial organization for a period of approximately fifteen years; twelve years of which time it was organized and doing business as a corporation under the Laws of the State of Montana; that it, as shown by the record, in conjunction with other unions of the State of Montana, which it had organized by sending its officers out for that purpose, and unions from Idaho, Colorado and South Dakota met for the purpose of creating the appellant, Western Federation of Miners, and that the said appellant owes its existence to appellee not the contrary, and that if appellee chose to occupy a subordinate position after said creation, it was purely a voluntary one. And we further submit to the Court that to say the least it is incredible to believe that appellee intended to put itself in a position whereby it could be deprived of approximately $100,000 of property by the creature it created at any time the said creature saw fit to suspend it and demand the said property. It appears from the record that the original charter and all the books and records of defendant (appellee here) were stolen and destroyed on June 13, 1914, thereby preventing this appellee from producing the records as evidence in this case at the trial in the lower court. Appellee further submits that in view of the fact that

appellant, Western Federation of Miners in 1906, employed and instructed counsel to investigate the chances of getting possession of the then property of this appellee; appellee submits that the Court would not be indulging in a violent presumption if it took the position that if the records of defendant in the lower court (appellee here) showed conditions such as described by the witness, Mr. Lowney, and the hearsay testimony of Mr. Meaney, and the charter in question contained the said forfeiture clause, and its books of record, a record of the proceedings relating to the acceptance of the said charter along the lines testified to by plaintiffs (appellants here) that an attempt would have been made approximately ten years earlier to get possession of appellee's property. Again it appears from the record how and for what purpose the property in question was accumulated. Such being the case what would defendant gain by taking a chance on giving it away.

Appellee insists that there is no evidence whatever that would warrant a belief that the charter bearing date of October 3, 1914, was a duplicate or a reissuance of the original charter. Appellants claim that the body of the charter is the same, but admits that the names contained upon the charter of 1893 were not upon the charter of October 3, 1914, but that in all other respects they claim the body of the charters are the same. If the charter bearing date May 15, 1893, was similar to other charters issued shortly thereafter and upon which the lower court commented upon in its decision, why was it that appellant, Mr. Mills found it necessary to ask for the names of at least ten

charter members who were on the first charter for the purpose of placing them upon the 1914 charter, instead of taking them off of the Aspen Charter, or any of the other charters first issued. Why is it that all the witnesses who appeared in the lower court and testified in behalf of appellee immediately noticed the difference and refused to accept the said charter. Without further comment upon the testimony in relation to the matters above referred to, we respectfully submit to this Court that the Trial Court heard all of the testimony offered at the said trial; personally knew the witnesses; observed their conduct and demeanor upon the stand; took notice of their interest or lack of interest in the outcome of the said trial and after carefully considering all of the facts and circumstances in relation thereto, decided this case on every point in favor of the appellee. (R. 296–302.)

AS TO THE LAW IN MORE DETAIL.

While positively denying the acceptance of the charter bearing date of October, 1914, and positively denying the existence of a forfeiture clause in the original charter of May 15, 1893, appellee for the sake of argument says: That even if all that appellants claim was contained therein (in the said charters above referred to), that the same would not in any manner help appellants' claim for the reason that such a contract would be contrary to law; contrary to public policy and therefore, void, and that the property of appellee could not be taken by reason thereof.

The Revised Statutes of 1879, and the amendments thereto, *supra,* and section 3883 and section 3889 as

amended by the 14th Legislative Assembly, 117; section 3890 and section 5051, Revised Codes of Montana (*ante*) and appellee's Articles of Incorporation, *supra,* clearly defines what appellee could, and can legally do. If it attempted to dispose of its property in the manner claimed by appellants, such action would be contrary to the laws of its creation. A contract of the character set forth in the complaint of appellants would not be binding for the reason that it would be depriving a corporation of possession, control, and ownership of its property without due process of law, and would be substituting the self-serving laws of a nonresident, unincorporated, voluntary association of persons whose membership (except its officers) is always changing to the laws of the state creating it, and for the further reason that a corporation cannot subject itself, its property or its members to an authority existing outside of, or beyond the control of the state creating it. To do so in this instance would incapacitate appellee from performing the very duty for which it was created. If such a claim was recognized by this Court, or by the Trial Court, and a judgment and decree handed down giving to appellants the said property of appellee herein, appellee after more than thirty-six years of struggle would be left without a dollar with which to carry on the objects of its creation.

The laws of the State of Montana, provide how the property of defendant could be, and can be acquired, held and disposed of; the Constitution of the Western Federation of Miners, section 1, article 6, provides, that its revenue shall be derived from charter

fees, per capita tax, and in case of emergency, such assessments as in the judgment of the executive board of convention may be necessary. (R. 385.) Any other method of collecting said revenues would be unconstitutional, and therefore, void. Section 3, article 1 shows that if twenty or more persons desire a charter they must be self-supporting (R. 372); section 4, article 15, Constitution of the Western Federation of Miners states what shall become of the property of defunct unions (R. 398), but nowhere do we find within the said constitution (R. 370–406) any section, sentence or clause providing for the taking of property from withdrawing unions. From all that is above stated, appellee claims that neither as a corporation, acting through its chosen officers, nor even with the unanimous consent of its members, could it enter into a contract of the character alleged. The said contract being beyond the scope of its powers as a corporation, and would be without any binding force or effect whatever.

We will now call the Court's attention to the following sections of the Revised Codes of Montana, relating to the general powers of corporations as applicable to the case now before the Court.

3833. HOW MANY AND WHO TO BE DIRECTORS.—The corporate powers, business and property of all corporations formed under this title must be exercised, conducted and controlled by a board of not less than three nor more than thirteen, to be elected from among the holders of stock, or where there is no capital stock, then from the members of such corporations. Directors of corporations for profit must be holders of stock therein in an amount to be fixed by the by-laws of the corporation, except

those named in the articles of incorporation for the first three months, who shall be directors until their successors are elected and qualified. Directors of all other corporations must be members thereof. Unless a quorum is present and acting, no business performed or act done is valid as against the corporation. Whenever a vacancy occurs in the office of the director, unless the by-laws of the corporation otherwise provide, such vacancy must be filled by an appointee of the Board.

3889. POWERS OF CORPORATIONS.—Every corporation, as such, has power:

1. Of succession, by its corporate name, for the period limited in its articles of incorporation.
2. To sue, and be sued, in any court.
3. To make and use a common seal, and alter the same at pleasure.
4. To purchase, hold, and convey such real and personal estate as the purposes of the corporation may require.
5. To appoint such subordinate officers or agents as the business of the corporation may require, and to allow them suitable compensation.
6. To make by-laws, not inconsistent with any existing law, for the management of its property, the regulation of its affairs, and for the transfer of its stock.
7. To enter into any obligations or contracts essential to the transaction of its ordinary affairs, or for the purposes of the corporation.
8. To create two or more kinds of stock of such classes with such designation, preferences and voting powers, or restrictions or qualifications thereof, as shall be stated or expressed in the articles of incorporation and the power to increase or decrease the stock, as in this code elsewhere provided, shall apply to all or any of the classes of stock; but at no time shall the total amount of the preferred stock exceed two-thirds of the actual capital paid in cash or property; and such preferred stock may, if desired, be made subject to redemption at not less than par, at a fixed time and price, to be expressed in the stock

certificate thereof; and the holder thereof shall be entitled to receive, and the corporation shall be bound to pay thereon, a fixed yearly dividend, if actually earned, to be expressed in the certificate not exceeding eight per centum, payable quarterly, semi-annually, or annually, before any dividend shall be set apart or paid in the common stock, and such dividend may be made cumulate. Unless its original or amended articles of incorporation shall so provide, no corporation shall create preferred stock. (Amendment approved March 5, 1915; Laws 1915, p. 117.)

3890. LIMITATION OF POWERS.—In addition to the powers enumerated in the preceding section, and to those elsewhere expressly given, no corporation shall possess or exercise any corporate powers, except such as are necessary to the exercise of the powers so enumerated and given.

5051. WHAT IS UNLAWFUL.—That is not lawful which is:

1. Contrary to an express provision of law.
2. Contrary to the policy of express law, though not expressly prohibited; or,
3. Otherwise contrary to good morals.

We now call the Court's attention briefly to the authorities governing benevolent, fraternal and industrial organizations. In so doing the writer of this brief desires to respectfully state to the Court that he, personally, has a very high opinion of the decisions of our courts of long ago, and while it may be urged by appellants that some of them relate to the distant past, we still respectfully claim, that the question here in dispute has long since been settled so thoroughly by learned courts, that it is only when new questions arise that courts of later date have been called to pass upon it.

One of the earliest cases that we have been able to find was submitted to the Court of Appeals of Mary-

land, and the opinion filed therein on March 11, 1886. The case grew out of a dispute that arose between a benevolent association composed of Jewish persons and entitled "District Grand Lodge, No. 51, Independent Order of B'Nai B'Rith v. Jedidjah Lodge, No. 5, Independent Order of B'Nai B'Rith." 3 Atlantic Report. 104–108.

In many respects the case in question is similar to the one at bar for the reason that the defendant lodge was the oldest primary lodge in the State of Maryland. Was in 1852 duly incorporated under the laws of said State. Thereafter in 1870, the plaintiff was incorporated under the laws of said State. The defendant controlled its own property, as in this case, for a long period of time; in February, 1884, the plaintiff, the Grand Lodge enacted legislation giving it control over certain funds of defendant; defendant refused to turn over the said funds and the District Grand Lodge No. 5, on August 19, 1884, forfeited defendant's charter, together with another for similar reasons. In July 1884, a small minority of defendant lodge brought an action against the said defendant to get possession of the funds, and asked for an injunction and a receiver, which was granted. "The defendant in their answer to this bill admitted that their lodge was chartered under the laws of the State and denied the right to any body of men to forfeit or annul that charter, or to take from them their property, or money." The defendants prevailed in the lower courts and an appeal was then taken to the Court of Appeals. After a thorough review of the questions involved in affirming the decree of the

lower court, the Appellate Court of Appeals uses this language:

"The utmost effect, therefore, that can be attributed to the action of the grand lodge on the nineteenth of August, 1884, is the forfeiture of the documentary or conventional charter which it granted to the appellee in December, 1853. But the appellee and the other defendants to the supplemental bill stand upon this state charter which is still in force. They hold the funds in controversy, and have the right to hold them under the corporate powers thus conferred, and they so hold them entirely unaffected by the forfeiture by virtue of which alone the appellant in its supplemental bill claims them. The affirmance of the decree may therefore be well rested on this ground, without reference to the doctrine that a court of equity never lends its aid to the enforcement of forfeitures and penalties. Decree affirmed."

District Grand Lodge No. 5, Independent Order of B'Nai B'Rith v. Jedidjah Lodge No. 5, Independent Order of B'Nai B'Rith. 3 Atlantic Rep. 104–108.

The above decision was sustained by the same court one year later in a cause growing out of the same transaction, Goodman et al. v. Jedidjah Lodge, 9 Atlantic, 13, and wherein the Court said:

"But, even if such change could not be made without inflicting such injury, and if the corporation has wrongfully refused to obey the order of the grand lodge, still this would only be cause for the annulment of its charter by the legislature, or for proceedings against it as provided by the corporation laws. Rev. Code, art. 67, p. 684, §§ 1–9. A corporation can only be dissolved, but the mode for doing that is likewise provided by law. Rev. Code, art. 67, p. 686, §§ 10–22. But this bill is not a proceeding under either of these provisions of the Code, and the court

has no power, upon such a bill, either to dissolve the corporation, or to forfeit its charter, or to correct any supposed misuse or abuse of its corporate powers; and it seems to us that the successful prosecution of one or the other of these remedies is essential to the relief asked by these complainants, even if they are entitled to it upon any ground.

"But, in the view we take of the case, they are not, upon the facts contained in this record, entitled to any relief whatever. The law applicable to the case is, in our opinion, correctly stated by the chancellor in Smith v. Smith, 3 Desaus. 557. That was a case similar, in many of its features, to this. The fund there in controversy belonged to an incorporate lodge of Masons, and was claimed by those who had in effect seceded and formed a new lodge. In the course of his opinion, the chancellor said: 'It has been stated that the fund in controversy was raised chiefly by the contributions of these lodges which have adhered to the change made by the grand lodge in Charleston, and that the lodges who adhered to the ancient charter had contributed but little to the fund. This may be, and I believe is, correct, but it cannot have any influence upon this cause; for whenever individuals, or portions of a corporation, quit the main body, they leave all the rights and funds of the corporation which remain in its perfect character. * * * I am satisfied that the individuals who had left an incorporated society, and formed a voluntary one, cannot maintain a suit to recover the corporate funds, more especially as that corporation remains, in my judgment, entire, and is in full possession of all its rights.'

"The present case is unlike that of Watson v. Jones, 13 Wall. 679. In that case the trustees, both by the act incorporating them, as well as by the rules of the church, were the mere nominal title holders and custodians of the church property, and others could be elected by the congregation to supply their places once in every two years. In the use of the church building and property for all religious services and ecclesiastical purposes, the trustees were

under the control of a church body, called the 'Church Sessions,' and the court held that the question who constituted the church sessions and the congregation entitled by their religious faith to the use of the church building for religious purposes was a matter proper to be decided by the highest judicatory in the church itself, which in that case was the Presbyterian Church. In such a case the court said the preponderating weight of judicial authority in this country, and under our system of law, was that the legal tribunals must accept as final and binding the decisions of the highest judicatory in the particular church upon questions 'of discipline, or of faith, or ecclesiastical rule, custom, or law.' But this corporation is of a very different character, created for a very different purpose, and vested with very different powers from those conferred upon the church trustees by the corporation laws of Kentucky in that case.

"And much less does the case before us resemble, either in its facts or in the principles decided, the memorable one of the Methodist Book Concern, reported in 16 How. 288. There a great church organization had in its general conference agreed upon a plan of separation into a Church North and a Church South, which plan carried with it a pro rata division of the common property belonging to the whole church, including that of the 'Book Concern,' and the bill was filed to enforce that division. The court simply held that the plan of separation was validly adopted, and that its effect, as to the division of the property, was such as the complainants insisted upon.

"The other cases cited by counsel for the appellants do not appear to us to have any more direct bearing upon the questions involved in the present case than these two, and we therefore deem it unnecessary to review them. Whatever powers the higher lodges in such an organization as this may have to make rules or laws for the government of the subordinate lodges, and the discipline of their members, we think it quite certain that the courts

can never recognize as valid any rule or law so made, the effect of which is to confiscate property, or to arbitrarily take away property rights from one set of members, and give them to another set, nor will the courts allow or recognize the enforcement of any such rule when its enforcement will accomplish, and is designed to accomplish such a result."

9 Atlantic Rep. 13–19 (Court of Appeals of Maryland, March 16, 1887).

In the case of Austin v. Searing, 16 N. Y. 112, a case similar to the one before the court, that is frequently cited, and in which Judges Shankland, Selden and Brown each wrote an opinion in which all concurred, held with the Maryland Court. As we consider the case of the utmost importance, we not only cite from it but request for it the greatest consideration. The Court in part said:

"But were it distinctly averred that the defendants had subscribed the constitution of the grand as well as the subordinate lodge, I should still be of the opinion that public policy would not admit of parties binding themselves by such engagements. The effect of some of the provisions of these constitutions is to create a tribunal having power to adjudicate upon the rights of property of all the members of the subordinate lodges, and to transfer that property to others; the members of this tribunal being liable to constant fluctuations, and not subject, in any case to the selection or control of the parties upon whose rights they sit in judgment.

"To create a judicial tribunal is one of the functions of the sovereign power; and although parties may always make such tribunal for themselves, in any specific case, by a submission to arbitration, yet the power is guarded by the most cautious rules. A contract that the parties will submit confers no power upon the arbitrator; and even where there is an actual submission, it may be revoked at any time.

The law allows the party up to the last moment to ascertain whether there is not some covert bias or prejudice on the part of the arbitrator chosen. * * *

"The by-laws and regulations of these voluntary associations may all be very well in their place and sphere, and may command generally the obedience and submission of those upon whom they are designed to act; they cannot, however, have the force of law, nor impair or affect the rights of property against the will of its real owners. So long as the members of these bodies yield their assent or concurrence, it is all very well; the law interposes no obstacle or objection. But when orders and decrees of the character of those referred to are resisted, and the owners of property refuse to be deprived of it, then it will be found that property has rights and the courts of justice have duties, of which the plaintiff in this action seems to have an indifferent conception. The courts of justice cannot be called upon to aid in enforcing the decrees of these self-created judicatories. The confiscation and forfeiture of property is an act of sovereign power; and the aid of this or any other court will not be rendered to enforce such proceedings, or to recognize legal or supposed legal rights founded upon them." * * *

Austin v. Searing, 16 N. Y. 112.

A member of a subordinate lodge of the Ancient Order of United Workmen was suspended by the Supreme Lodge of the State of Kentucky because he refused to recognize and pay an assessment made by the said Supreme Lodge; the Supreme Lodge being incorporated under the laws of Kentucky, and the local lodge being incorporated under the laws of Michigan. The Supreme Court of Michigan considered the matter of sufficient importance to grant a writ of mandate reinstating the suspended member, has the following to say:

"The relator is not liable to pay the assessment. It is not competent for the respondent to subject itself, or its members, to a foreign authority in this way. There is no law of the State permitting it, nor could there be any law of the State which would subject a corporation created and existing under the laws of this State to the jurisdiction and control of a body existing in another state, and in no manner under the control of our law. The attempt of the respondent to do this is an attempt to set aside and ignore the very law of its being. A *mandamus* will therefore issue as prayed."

Frank W. Lamphere v. The Grand Lodge of the Ancient Order of United Workmen of the State of Michigan, 47 Mich. Rep. 429–431.

In deciding a similar case in the same way, the Supreme Court of Iowa quotes with approval the above case in State ex rel. Graham et al. v. Miller and Another, 23 N. W. 241.

In a California case wherein a dispute arose between a subordinate lodge and the Grand Lodge of the Independent Order of Good Templars, and wherein the Grand Lodge suspended the subordinate lodge, and the Grand Chief Templar of the State of California appointed one Ellsworth to take charge of the property of said lodge for the reason that by the Constitution of the Grand Lodge, it was declared that any subordinate lodge which fails to do certain things shall be deemed to be an extinct lodge, and its charter shall be forfeited, and wherein the subordinate lodge brought suit for an injunction to restrain the Grand Lodge, the lower court gave judgment for the plaintiff, and which being appealed, and in passing upon the same the Supreme Court of the State of California said:

"The question presented is one of property merely; and in relation to this two controlling facts appear from the record, viz: That the plaintiff is a corporation duly organized under the laws of the State of California, and that it is the owner of the property in question, in which the defendants have no right, title or interest. It follows from these facts that the plaintiff is entitled to be protected against the acts of the defendants. The ownership of the property draws to itself the right of possession and control. And since the plaintiff is a corporation it can only be dissolved in the manner prescribed by the laws of California. The provision of the constitution of the grand lodge that in certain contingencies the subordinate lodge 'shall be deemed an extinct lodge, and its charter shall be forfeited,' and the 'suspension' by the grand lodge, and the action taken by the grand chief templar, have not the slightest effect upon the legal existence of the corporation; and as long as it exists its affairs must be managed by its duly-elected officers, as provided by law. If they misconduct themselves, appropriate proceedings to remove them must be resorted to. But the propriety of their conduct will not be inquired into in a suit by the corporation to protect its property.

"The showing seems to us to be sufficient to entitle the plaintiff to an injunction. We therefore advise that the judgment be affirmed."

Merrill Lodge No. 299, I. O. G. T. v. Ellsworth et al., 20 Pac. Rep. 399–400 (Supreme Court of California, January 28, 1889).

In the case of Allnut v. High Court of Foresters, the relator, a member of the City of Straits Court (a Michigan corporation), was charged by another body, the Penisular Court, with defamation; was fined fifteen dollars and suspended for two years. In passing upon the matter the Supreme Court of Michigan, June 27, 1886, said: * * *

"The Detroit society being a corporation under our laws, the rights of its members are entitled, in a proper case, to protection. The questions discussed relate to the propriety of our interference in this case.

"Under our statutes, the corporation in question has the right and duty of determining the conditions of membership. This it has done by its by-laws, and we find nothing in them which makes such membership subject to the action of any outside body. The subsidiary high court is not an incorporated body, under the laws of this State. One of the objections raised to its action here is that the rules of the order require it to become incorporated. We shall not undertake to discuss that question, but there is evidently much reason for it, as it would be contrary to the general legal rules to allow membership in a corporation to depend on the will or action of an unincorporated outside society. Whatever advantages may exist in affiliation with other associations, the rights of Michigan corporations must be governed by the laws of Michigan, and corporate privileges cannot be destroyed in violation of them.

28 N. W. Rep. 802–805 (Sup. Ct. of Michigan, June 27, 1886).

In the case of State Council of Junior Order of United American Mechanics of New Jersey v. National Council of Junior Order of United American Mechanics of North America et al., a case wherein the complainant, the State Council, withdrew from defendant, National Council, and the National Council organized, for similar purposes, another State Council, and gave it the same name as complainant for the purpose of putting complainant out of business. Complainant brought an action against the National Council praying for an injunction to prevent it from creating and supporting the rival body and to prevent it from using its (complainant's)

name. In the beginning defendant denied that its object was to put complainant out of business, but later admitted that such would be the result if defendant won. The Court of Chancery complimented both sides upon the manner in which all questions were presented, both in written briefs and oral arguments. As the same applies to the case now before the Court, we will, while stating that every sentence of the decision is worthy of careful scrutiny, call the Court's attention to those portions of said decision that supports the contention of appellee herein:

"The reason it gives for this action is that the complainant was for many years, and still ought to be subject to the jurisdiction of the defendant, and obedient to its laws, and that in the years 1899 and 1900 it rebelled and seceded from the defendant, and was disciplined therefor by the defendant, and its charter, granted by defendant and involving its right to exist, was revoked by the defendant. This rebellious conduct on the part of the complainant is admitted and justified by it, and the validity of this justification is one of the important questions, if not the only question, in the cause, and will be first dealt with. * * *

"The complainant admits that for many years it has held a charter granted by the defendant, and that it acted in all respects in obedience to the laws enacted by the defendant, until the fall of 1899, but it denies that it is in any sense the creature of the defendant, but asserts and shows that its existence as an organization of precisely its present character, predated that of the defendant, and that it, the complainant, in conjunction with a similar organization in the State of Pennsylvania and one in the State of Delaware, created the defendant, and that the defendant owes its existence to the complainant rather than the contrary, and it argues that the subordinate position which, subsequent to the creation of the defendant,

the complainant chose to occupy to it was purely voluntary and contractual and that complainant had the right, at any time, at its free will and pleasure, to dissolve the same, and resume its original independent existence, with all its consequences, viz., the full and complete jurisdiction which it had previously exercised over numerous local councils of the same order in the State of New Jersey. * * *

"The complainant was incorporated by an act of the Legislature of February 25, 1875 (P. L. 1875 (private), p. 52, but it was in existence as an unincorporated society from July 12, 1869. * * *

"Of course, the important matter, forming the very core and heart of these organizations, is the object or objects of their existence. That object is stated in the charter granted to complainant by the legislature, as follows: 'And be it enacted, that the objects of this association shall be to maintain and promote the interests of the American youth; to assist them in obtaining employment; to encourage them in business; to afford relief to the members thereof, and to defray the expenses of their funerals, or such cases of distress as shall be defined by the by-laws.' * * *

"The existence of two State councils bearing the same name, and having the same jurisdiction in one State is entirely inconsistent with the nature of the order. And while at the outset of the hearing counsel for the defendant did faintly insist, as before remarked, that the defendant's plan of organizing sufficient local councils in New Jersey loyal to it in order to organize a State council loyal to it did not necessarily exclude the existence and jurisdiction of complainant, counsel finally abandoned that position, and boldly claimed that it meant the practical destruction of complainant and the compelling all the councils now loyal to complainant to come under the jurisdiction of the State council to be erected by defendant. In support of this theory, counsel for the defendant take radical grounds. They assert, as I understand their argument, that the decree of expulsion made against complainant by the National

council resulted in its extinction as an entity, and if that decree was inefficient for that purpose that the secession of the complainant from the National council had the same effect. The gist of their argument, as I understand it, is that the existence of the complainant's association for all these years has been so intertwined and combined with that of the defendant that the separation of the two means social death to the complainant. In other words, they assert that it is quite impossible to conceive of a State council of the Junior Order of the United American Mechanics which is not subordinate to and, so to speak, a part of the National council.

"In support of this theory counsel pointed out the fact that for all these years the complainant has acted with and in complete subordination to the National Council, and without any apparent reliance upon its State charter. * * *

"But it must be borne in mind that all this was purely voluntary on the part of the State council, and that its existence as a State council preceded that of the National council, and from this fact alone its ability to exist as a social entity independent of the National council clearly appears. Moreover, the ability of the local subordinate councils to exist independently even of the State council must be an admitted fact, for the existence of many of those in New Jersey preceded that of the State council. In point of fact, each local subordinate council has its own constitution and by-laws, and the logical result of the situation seems to be, as appears from an examination of the literature of the association, that while the National council cannot exist without the support of the several State councils and while the State councils cannot exist without the support of the several local subordinate councils, those local subordinate councils are the original constituent units or atoms, who, once having acquired life and existence, may continue that life and existence without reference to or assistance from either State or National council. * * *

"The complainant was organized as a complete social entity, quite capable of prolonged existence as the representative of its local constituent units, without the aid of the National council. It had distinct objects and purposes. Its joining in the creation of the National council and coming under its jurisdiction did not alter its essence or render it incapable of existence separate from the National council with full capacity to exercise all the functions which it had exercised when under such jurisdiction. The grant to the complainant of a special charter by the legislature approved, and made permanent its objects, and gave it by implication an exclusive right to the use of its name in this State as well as the exclusive right to grant charters to local councils. The attempt of the defendant, by unlawful means, to add to the original objects of the institution justified the complainant, if any justification is necessary, in severing its connection with the defendant. Such severance did not alter the inherent character of complainant's existence or prevent it from altering the details of its constitution to suit it to an independent existence. It now, by its constituent members, represents the overwhelming majority of the local councils in this State and their constituent members amount in number to many thousands, and so long as it so represents them it is entitled to the exclusive use of its name and the exclusive right to grant charters to local councils and to be treated as the head of the order in this State.

"I will advise a decree in accordance with these views."

(Court of Chancery of New Jersey, Aug. 1, 1906), 64 Atlantic 561–573.

In the case of Detroit Savings Bank v. Haines, it appears that the appellee was receiver of the Supreme Commandery of the United Friends of Michigan, and as such had about fifteen hundred dollars on deposit in the said bank. On the 26th day of July, 1898, one Ida M. Crout Potter filed her bill of com-

plaint in the Circuit Court for the County of Wayne, in Chancery, against the Supreme Commandery of the United Friends of Michigan. The Supreme Commandery was made the sole defendant. The bill, among other things prayed for an injunction against E. F. Lamb, William A. Haines and the Citizens' Savings Bank restraining them from paying any money or disposing of any property in their hands belonging to the defendant. Later the Circuit Court made an order appointing Mr. Haines receiver, and also granted an injunction against the bank. The bank filed its bill of interpleader against the receiver. The question in dispute being whether the Supreme Commandery of the United Friends of Michigan had any right to the funds in dispute. Proofs were heard; the bank was ordered to pay into court the amount in dispute and upon making said payment the bank was discharged from liability in the matter. From this decision an appeal was taken, which said appeal was dismissed by the Supreme Court. Other proceedings were thereafter had, which finally resulted in the Court decreeing the fund in controversy to defendant-appellee. Plaintiff appealed. In finally passing upon the matter the Court in part said:

"The funds, and the only ones, to which the supreme commandery is entitled, are prescribed by the law of that commandery, as follows: 'The revenues of the supreme commandery shall be derived from charter fees from subordinate commanderies, per capita tax from subordinate commanderies, and from sale of supplies to subordinate commanderies and other members of the order.' It was not, therefore, entitled to this sick-benefit fund. That fund belonged to Germania Commandery, No. 30, which, by

almost unanimous vote, passed it over to the defendant-appellee. It is clear that the supreme commandery has no interest in the fund, and was not entitled to the relief asked. The Court below very properly decreed that the moneys belonged to the sick-benefit fund, and that the defendant-appellee was entitled to them. That decree must be affirmed, with costs against the receiver." (Supreme Court of Michigan, July 19, 1901.)

Detroit Savings Bank v. Haines, 87 N. W. 66–68.

Reading the above case, the Court can see that the funds of the Supreme Commandery were raised in the same manner as the funds of appellant, Western Federation of Miners. The Court as above shown, decided that the Supreme Commandery was not entitled to the relief asked.

We now desire to call the Court's attention to a Pennsylvania case, entitled, "State Council Junior Order of United American Mechanics of Pennsylvania v. Emery et al. In this case it appears that a division arose in the said order during the year 1900 resulting in the formation of two factions. Duquesne Lodge No. 110, by formal resolution declared its adherence to the faction of the State Council headed by S. B. Woods, the other faction recognized Wobensmith. Duquesne Council No. 110 refused to pay to the other faction. On May 10, 1904, in *quo warranto* proceedings in the Court of Common Pleas, it was adjudged that the officers headed by Wobensmith were the legal officers of the State Council, and the other faction declared not entitled to the officers. Later, the council whose legality had been established, made demand upon the other faction for all the books, papers, charters, parapher-

nalia, funds and properties of whatever nature and kind in their possession and control and received everything but a sum of money contributed for sick and funeral benefits, which amounted to $2,037.18. An action was then brought to compel the defendant to account for and pay over this fund to the State council. In passing upon this matter the Court, in part, said:

"This fund was contributed by members of Duquesne Council, prior to the date when its charter was revoked, under the following provisions in its constitution: 'The dues of this council shall be such sums as shall be prescribed by the by-laws, which shall in no case be less than ten cents per week, which shall constitute a fund for the relief of sick and disabled members, and such other purposes as the council may deem judicious and such further sums as the by-laws shall prescribe for funeral dues, or to sustain their treasury. * * * Each council shall have power by their by-laws to credit the first money paid in by a member to his indebtedness for funeral and other charges, and the balance, if any, shall be credited to his dues.' And the following by-laws: 'The regular weekly dues of each contributing member of this council shall be fifteen cents. * * * The first money that a member pays into this council shall be credited on account of fines, funeral assessments, etc., he may owe, before any shall be credited for weekly dues.' * * *

"It does not appear that the State council had any plan or arrangement for the collection or payment of any sick or funeral benefits. *All the beneficial features of that nature were left to the care of the local councils. This fund in question was made up entirely from the voluntary contributions of the members* of the local council, placed in the hands of its trustees to be distributed by them for the benefit of the sick and the families of the dead of its members. With the control and administration of this

fund the State council does not seem to have had anything to do. The authorities amply sustain the contention that funds raised by the members of subordinate bodies of this character for sick and funeral benefits, belong to the subordinate association, and are to be distributed by them to the parties for whose use and benefit they were contributed. It is held that the revocation of the charter of a subordinate body by the supreme body cannot have the effect of confiscating the property owned absolutely by the local body. The principle is thus stated in Niblack on Benefit Societies, § 129, p. 255: 'The terms of the laws of the supreme lodge or council of a society, providing that on suspension of one of the local organizations its property shall be forfeited and vest in the secretary of the supreme body, are void, in that they seek to confiscate without judicial process property held and owned absolutely by the local organization'—citing Wicks v. Monihan, 130 N. Y. 232, 29 N. E. 139, 14 L. R. A. 243; Wells v. Monihan, 129 N. Y. 161, 29 N. E. 232; Austin v. Searing, 16 N. Y. 112, 69 Am. Dec. 665. 'Whatever powers the higher lodges in such an organization as this may have to make rules or laws for the government of the subordinate lodges and the discipline of their members, we think it quite certain that the courts can never recognize as valid any rule or law so made, the effect of which is to confiscate property, or arbitrarily to take away property rights from one set of members and give them to another set; nor will the courts allow or recognize the enforcement of any such rule when its enforcement will accomplish, and is designed to accomplish, such a result.' Goodman v. Jedidjah Lodge, 67 Md. 117 (127), 9 Atl. 13; 13 Atl. 627. Another textwriter thus sums up the prevailing view of the courts as to this matter: 'In regard to the jurisdiction of superior over inferior bodies in an order or society, the courts will not enforce a forfeiture of the property rights of the latter, but may even interfere to prevent it. In such cases considerations of public policy will always prevail. In mere matters of dis-

cipline, where no property right is involved, the decisions of the superior organizations, if regularly rendered and not intentionally unjust, will be regarded as final. * * * Forfeiture of the conventional charter of a society incorporated by the state will not divest its property, nor can the property be affected by a secession of part of its members. Even if unincorporated, the majority of a society have generally the right to cut loose from a superior governing body and the minority have no redress if the property is used for the general purpose for which it was acquired.' 1 Bacon on Benefit Societies (1904), § 116.

"Does the act of June 20, 1883 (P. L. 132), change in any way the application of this principle in Pennsylvania? We think not. It does not attempt to divest any property rights, and, if it did, it would be unconstitutional. * * *

"We agree with the court below that under the facts of the case the payments so made should be approved by a court of equity. To hold otherwise would be to say that equity should do an inequitable thing.

"The assignments of error are overruled, the decree of the court below is affirmed, and this appeal is dismissed at the cost of the appellant."

(Supreme Court of Pennsylvania, Jan. 6, 1908), 68 Atl. 1023–1026.

We now desire to call the Court's attention to the last word on the law of this case that we have been able to find as far as the same relates to benevolent and fraternal bodies, which was decided by the Court of Chancery of New Jersey, July 14, 1913. The case in question being entitled the Grand Court Foresters of America v. Court Cavour No. 133, Foresters of America et al. In this case the complainant brought this action to compel the Court Cavour, the defendant, a beneficial society allied to the Foresters

of America, to turn over to the complainant the funds and property heretofore belonging to it on the ground that Court Cavour had been dissolved and that under the constitution and by-laws of the Foresters, the title to the property had vested in complainant. The Court will observe that in this case they proceeded, not under an alleged forfeiture clause contained in a charter, but under the Constitution and by-laws of complainant, which they claim provided for such forfeiture, while in the case now before the Court, the Court can examine, from cover to cover, the Constitution and by-laws of appellant, Western Federation of Miners, without finding a single syllable, word, clause or sentence authorizing the appellant, Western Federation of Miners, or any body acting for it, or under its direction or control to claim or take possession of the property of appellee here. (See R. 370–406.)

As the case at bar, and the one here cited have much in common, we will call the Court's attention in part to the language of the decision.

"Each candidate for admission to a subordinate court, in his written application, declares, among other things, that he will conform to and abide by all the rules of the court and of the order now in force or hereafter to be made, or submit to the penalties therein contained. * * *

"Among the so-called Supreme Court laws is the following: 'Sec. 215. Any Grand or subordinate court found guilty after due notice and hearing of any of the charges hereinafter set forth may be suspended for a period not exceeding two years, dissolved, or expelled. If dissolved or expelled, its charter, dispensation, rituals, money, books, paper, and all

other property, real or personal, shall be forfeited to the Supreme Court, or the respective Grand Court.' * * *

"But there is another difficulty. In State Council v. Enterprise Council No. 6, 75 N. J. Eq. 245, 72 Atl. 19, it was held that under the laws of the order the State Council had no authority to administer the trust fund created by the local council for the benefit of its members and no power to dissolve the local court, considered either as a voluntary association or as an incorporated society. That seems to be the case here. Counsel for complainant sought to convince me, in a very elaborate argument, that the Grand Lodge was vested with authority to carry out the trusts or objects for which Court Cavour was constituted; but after a careful examination of the various laws of the order I fail to find any such authority. It is true that section 1 of article 18 of the Grand Court laws prescribed that, 'should any subordinate court become, either by operation of law or otherwise, dissolved or be suspended, expelled or secede from the order, all property, money, goods and effects shall vest in and be delivered to the Grand Lodge upon demand being made therefor.' But it is not provided that it shall take the money and other property of the dissolved court and apply them as a separate fund for the payment of its debts or for the other uses for which they were contributed. As far as appears they go into the general fund of the Grand Court subject to be disposed of according to its rules. * * *

"The rationale of the situation is that: The right of the member is contractual. He has agreed that the fund contributed by himself and by the other members shall be managed and applied by the officers of the court to which he belongs. He has further agreed that on dissolution the property shall go to the Grand Court; but he had not agreed that on the contingency that has happened, and while the local society, whether incorporated or not incorporated, exists, it shall be administered by the officers and agents of any other court. There has

been, however, no dissolution, first, because the judgment was unwarranted; second, because, if warranted, the Grand Court, has no power to dissolve the local society. * * *

"The so-called constitution and laws of the order are, as far as this corporation may have adopted them, nothing but its by-laws. Unlike the certificate of incorporation of the Supreme and Grand Courts, the certificate of incorporation of Court Cavour does not recognize any obligation to or dependence upon or connection with the order at large. It is in legal contemplation an independent entity, and its by-laws must stand or fall on that assumption. As long as it exists it cannot devolve upon any other organization those duties or obligations which, by its charter derived from the State, it is bound to perform itself. The Supreme and Grand Courts can by appropriate action, for cause, sever the bond which unites it to them, but after severance it is still a corporation and bound to the obligations of a corporation; to paraphrase the words of Mr. Justice Swayze: 'It has not been dissolved. It is still an existing body. All that has happened has been that its allegiance to the order is at an end.'

"Forfeitures are not favored. They certainly will not be enforced, where enforcement must incapacitate the corporation from performing the very duty for which it was constituted. Counsel lays great stress upon the agreement to which each individual must subscribe on joining. 'I will conform to and abide by all the rules of the court and of the order * * * or submit to the penalties therein contained.' But this is the subscription of the individual binding, no doubt, upon him, but not upon the corporation. It is the right of the corporation and not of the individual that is here in controversy.

"I think the bill should be dismissed."

Affirmed (Court of Chancery of New Jersey, July 14, 1913), 88 Atl. 191–194.

See, also, State Council of Junior Order of United American Mechanics of New Jersey v. Enterprise Council, No. 6 (Court of Errors and Appeals of New Jersey, March 1, 1909), 72 Atl. 19–24.

See, also, State Council of Junior Order of United American Mechanics of New Jersey v. Hollywood Council (Court of Errors and Appeals of New Jersey, March 1, 1909), 72 Atl. 24.

We find that Bacon on Benefit Societies upholds the general rule that forfeitures are not favored as shown by the following:

"4. In regard to the jurisdiction of superior over inferior bodies in an order, or society, the courts will not enforce a forfeiture of the property rights of the latter, but may even interfere to prevent it. In such cases considerations of public policy will always prevail. In mere matters of discipline, where no property right is involved, the decision of the superior organization, if regularly rendered and not inherently unjust, will be regarded as final.

"5. Where subordinate organizations have a conventional as well as a State charter either may be forfeited or taken away without affecting the other. But in no case can a State charter be impaired or taken away except by direct action of the State. Forfeiture of the conventional charter of a society incorporated by the State will not divest its property, nor can the property be affected by a secession of part of its members. Even if unincorporated, the majority of a society have generally the right to cut loose from a superior governing body, and the minority have no redress if the property is used for the general purposes for which it was acquired."

Benefit Societies and Life Insurance by Bacon, p. 116.

See, also, National Council of Junior Order of United American Mechanics of United States of America v. State Council of Junior Order of United American Mechanics of State of New Jersey et al. (Court of Chancery of New Jersey, Jan. 23, 1903), 53 Atl. 1082.

In all of the cases heretofore cited the actions in question were begun by benevolent or fraternal organizations and while their objects and purposes may be somewhat different to those of appellee here, we respectfully insist that the same rule applies. We will further say that it seems to be a new departure on the part of labor unions that are supposed to be organized for the purpose of protecting and uplifting the humble worker; caring for him when injured or distressed, to bring actions of this character; in fact, the writer of this brief would feel safe in saying that this is the only case brought before the courts for the purpose of taking away the contributions of the humble toiler, contributed by him for certain well-defined, specific purposes, thereby depriving him of this source of protection and changing altogether the object for which the property of appellee here was accumulated.

To further strengthen our position, however, we now call the Court's attention to the case of Wicks v. Monihan, a case decided by the Court of Appeals of New York, December 1, 1891. In this case

it appears that the plaintiff was treasurer of Local Assembly No. 4119 of the Knights of Labor, an industrial organization of Amsterdam, New York. The local assembly in question loaned five hundred dollars to E. H. Monihan and John C. Stack for the purpose of helping them, as representatives of another body to conduct a strike. After the money was loaned, and before any payment was made, the said Local Assembly No. 4119, had a disagreement with the General Assembly of the Knights of Labor of America (the superior governing body) and had been dissolved by the said General Assembly. The defense set up was that the local being dissolved by the governing body, it (the General Assembly) thereby became the owner of all of the property of the local, and that by reason of said dissolution the plaintiff had no cause of action. The attention of the Court is called to the fact that the forfeiture in this case as in others cited is contained in the Constitution and by-laws of the General Assembly of the Knights of Labor, and not limited to an alleged charter provision. The lower court decided this case in favor of the plaintiff. In affirming said judgment the Court of Appeals, in part, said:

"The case was defended on the theory that the general assembly possessed, and could rightfully exercise, autocratic governmental powers over all subordinate branches of the society; and that it could, by its order, without a hearing, expel from the organization any local or district assembly, and by that act become entitled to all the property of the assembly.

"In August, 1886, more than seven residents of Amsterdam after having effected a preliminary

organization, were chartered under the name of 'Local Assembly No. 4119 of the Knights of Labor' by the General Assembly of Knights of Labor of America, and were attached to District Assembly No. 126. The district and the local assembly continued attached to the general assembly until May 26, 1887, when the charter of District Assembly No. 126, and the charters of all of the local assemblies attached thereto (including No. 4119), were revoked and annulled for disobedience of the orders of the general assembly, and the master workmen of the district and local assemblies were directed to deliver their property to the general secretary of the general assembly, pursuant to section 1 of article 5 of the constitution of the general assembly, which provides: 'Art. 5, § 1. It shall be the duty of the district recording secretary to collect and take charge of the charters, seals, books, money and other property of any locals attached to the district assembly that may lapse, and shall give receipt to the officer of the local surrendering the same.' Local Assembly No. 4119 declined to surrender its property including the note in suit, to the general secretary, but continued its local organization, and retained possession of its property, in defiance of the order of the general assembly.

"It is asserted that the order of the general assembly *ipso facto* divested the local assembly of its title to the note in suit, as well as to all other property held by it. This contention cannot be sustained, on principle of authority. The precise question was determined in Austin v. Searing, 16 N. Y. 112, which arose over the title of Cayuga Lodge No. 80 of the Independent Order of Odd-Fellows to certain property in its possession. In that case, as in this, there was a supreme tribunal called the 'Grand Lodge of the United States of America,' and, like the Knights of Labor, it had district organizations. By the constitution of the Odd-Fellows, the grand lodge of the district had power to revoke the charters of all local lodges, and, when revoked, to take possession of their property. The

charter of Cayuga Lodge No. 80 was revoked for an alleged act of insubordination, and a decree confiscating the property promulgated. Nevertheless the members of the lodge refused to surrender their property, but retained possession of it. Afterwards a new lodge was chartered at Auburn by the Grand Lodge of the United States, and given the same name and number as the old lodge, but composed of different persons from those associated as members of the first lodge. By the charter granted to the new lodge all of the property which the grand lodge claimed to have acquired title to by confiscation was, in form, transferred to the new lodge. An action was brought by the persons associated and represented by the new lodge against the persons associated and represented by the old lodge for the recovery of the property in the possession of the old lodge. It was held that the provision in the constitution of the order, giving to the grand lodge power to confiscate the property of subordinate lodges, could not be enforced in the courts; and that the decree of the grand lodge, revoking the charter of the insubordinate local lodge, did not divest it of its property, and that the plaintiff could not recover. This judgment has remained unquestioned for more than a third of a century, and is the law of this state today.

"As before stated, this case was not tried upon the theory that the organizations which constitute the order of Knights of Labor are bound together by any contract, or that Local Assembly No. 4119 had contracted with the general assembly that, under certain circumstances, its property should be transferred to and become that of the general assembly, but upon the theory that the general assembly was vested with governmental powers, and could, by its edicts, divest the title of any district or local assembly to its property, and vest it in itself, without a hearing. This position cannot be sustained. The property of Local Assembly No. 4119 was not derived from the general assembly, but was contributed and owned by the associated members of

No. 4119, and held by an absolute title, as perfect and unconditional, so far as is shown by the case, as is the title by which any person or corporation holds its individual property. *To hold that the general assembly can by a decree divest the title to property, and vest it in itself, is giving to it a power which is forbidden to be exercised by congress, or by the legislature of any state. Bills confiscating the property of citizens, or of associations, without judicial process, are forbidden by the constitution; and no person, corporation, or association authorized to acquire and hold property can be divested of it by the fiat of any organization, nor in any way without* its consent, or by due process of law. This case is quite different from those arising over the expulsion of members from clubs and voluntary associations for violation of rules. In those cases the rights of the individual members are fixed by contract, and it is held that a member may be expelled by the association for violating the terms of the compact, provided, however, that due notice of the proposed action and an opportunity for defense be given. The judgment should be affirmed, with costs. All concur."

29 N. E. 139–140.

In the Trial Court appellants strenuously argued that appellee had done many things contrary to its articles of incorporation. Mentioning the fact that it had loaned money to other unions, the same being secured by mortgages; that because it had done so and nothing in its articles of incorporation authorized the making of loans it could, by reason thereof, enter into a contract with appellants whereby if it did not like its association with it or them, it could make it or them a present of thirty-six years of savings, and in their oral argument made the following statement:

"Do they mean to say they could take the money and engage in the picture show business?"

Appellee's answer is that it could, provided that the investment so made was an investment of idle moneys of the defendant corporation and was invested for the purpose of increasing the funds of appellee to be used by appellee for the purposes for which it was created. In support of this contention we claim that it is a fact well known to courts and laymen that as an organization becomes older its oldest members become enfeebled, thereby increasing its expenses.

In citing authorities to the Trial Court during the trial, appellants, in support of its views cited the case of Miners' Ditch Co. v. Marks Zellerback and George C. Powers, 37 Cal. 580–582, in which the Court in part said:

"The question put in the course of argument, 'Would a contract by a railway company for a theater or chapel be void? exemplifies the doctrine.' It would or would not, according as the purpose of the contracting parties was or was not connected with the railway. It might be a speculation separate from the railway, and prohibited. Or, if works were wanted in waste place, and the company found it for their interest to build a town and supply it with all requisites for inhabitancy, and, in order to secure a permanent supply of workmen of skill and responsibility, added a chapel and a theater, with religious and secular instruction, it might be for the purpose of the railway, and valid, and, though distantly connected, the outlay might be found eventually to increase the profit from the traffic."

The above case we take it very fairly and forcibly disposes of appellants' contention in this respect.

Appellants comment upon the fact that appellee, by its answer called to the attention of the Trial Court that on or about the 17th day of December, 1914, an action was commenced by appellants, Charles H. Moyer and Guy E. Miller, associated with other parties against the then officers and trustees of appellee, which was known as, and numbered A–6590, which said complaint was thereafter amended. (See R. 95–110.) In said complaint the above-named appellants did not claim the ownership of the property now in dispute, but prayed for a restraining order preventing the defendants named therein, or anyone acting for them, from interfering with the said appellants (in the possession and control of the property of the Butte Miners' Union, a corporation, or the prosecution of the business and affairs of the Butte Miners' Union, a corporation. (R. 102–103.)

To this amended complaint the defendants therein named filed their answer (R. 110–124); to the allegations contained in the answer, the plaintiffs therein, two of appellants here, filed their reply, the substance of which denied generally and specifically each and every of the allegations in said answer contained. (R. 125–126.)

A hearing was had upon an order to show cause which extended for a period of many months, at the end of which time the Court granted the said order and returned its conclusions of law in which he found all issues in favor of the then plaintiffs and part of appellants herein. (R. 130–135.) Defendants, then officers of defendant below, applied

to the Supreme Court of the State of Montana for a writ of supervisory control (R. 136–250), and an order to show cause therein was issued out of the Supreme Court of the State of Montana. (R. 253–257.)

A motion to quash said order was filed by respondents (R. 258–259), and later an answer was filed therein (R. 259–293), and a hearing had thereon on the third day of July, 1915, and upon the seventh day of July, 1915, the Court made the following order:

"ORDER ANNULLING ORDER DIRECTING ISSUANCE OF INJUNCTION WESTERN FEDERATION OF MINERS ET AL. vs. SCAHILL ET AL.

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STATE ex rel. SCAHILL,

v.

DISTRICT COURT.

"The order directing an injunction to issue in the case of Western Federation of Miners et al. v. Martin Scahill et al., made on June 12, 1915, is annulled and the district court is ordered to set it aside.

"Opinion to be delivered at the convenience of the Court."

"The above is a memoranda opinion of the Supreme Court of Montana, and appellants contend that the said Supreme Court never wrote nor delivered an opinion from that day to this; the said date being the 7th day of July, 1915. In relation to the above we desire to say to the Court that respondents in the Supreme Court, plaintiffs in the District Court and a portion of the appellants here, have never called up or asked to have set the said

cause for final hearing or determination and we are satisfied they never will, but whether a memoranda opinion or otherwise, the opinion in question in clear and unmistakable terms expresses the view taken of the actions (similar to this), and in a manner that was not satisfactory to the respondents therein, a portion of appellants here.

While apologizing to the Court for unduly extending our brief in this case, we respectfully submit that there was no error committed by the Trial Court, and that the decree should be affirmed.

Respectfully submitted,

A. C. McDANIEL,
PETER BREEN,
Solicitors for Appellee.